



CITY OF

Hopewell

VIRGINIA



HOPEWELL FIRE STATION

Volume 1 of 3

Project Manual

August 12, 2016 – Bid Set



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INVITATION FOR BID
CITY OF HOPEWELL, VIRGINIA
PURCHASING DEPARTMENT
HOPEWELL POLICE STATION AND
FIRE STATION

BID: #02 -17

DATE: August 18, 2016

Sealed Bids, subject to the general conditions and specifications hereby attached, will be received at the Office of the City Clerk, Second Floor, Municipal Building, 300 North Main Street, Hopewell, Virginia 23860 until, but not later than 11:00 a.m. **THURSDAY, September 22, 2016** and then publicly opened in the Council Chambers, Municipal Building, 300 North Main Street, Hopewell, Virginia on the aforementioned date at 11:05 a.m. for furnishing the solicited supplies or services.

1. All bids must be submitted in a sealed envelope.
2. Regardless of delivery method of bid, the **outside** of each envelope must clearly indicate the following: *(if bid is delivered by Federal Express, UPS, USPS Priority, etc. or any other means, the outside of **each** envelope **must also** clearly indicate):*

Office of the City Clerk
Second Floor
Municipal Building
300 North Main Street
Hopewell, Virginia 23860
Closing Date of Bid: September 22, 2016
Commodity Name: HOPEWELL POLICE STATION AND FIRE STATION
Bid #02-17

FOR YOUR BID TO BE CONSIDERED, IT MUST BE SUBMITTED ON THIS INVITATION FOR BID IN THE PLACES PROVIDED. BIDDERS SHALL SIGN THIS FORM WITHOUT DETACHING FROM REST OF BID AND MUST RETURN BID IN ITS ENTIRETY.

ANY BID RECEIVED AFTER THE ANNOUNCED TIME AND DATE OF OPENING, WHETHER BY MAIL OR OTHERWISE, WILL NOT BE CONSIDERED AND WILL BE RETURNED UNOPENED.

All bid quotations are subject to general terms and conditions hereby attached and will be rejected if not properly executed.

Individual contractors must provide their social security numbers and other types of firms must provide their federal employer identification numbers in the payment clauses to be included in contracts.

The City reserves the right to be sole judge and to make the award in accordance with its own judgement as to what will best meet its requirements and be in the best interest of the City. The City reserves the right to reject any or all bids, to waive all informalities, and to reject any or all items of any bid.

PRE-BID CONFERENCE: A pre-bid conference will be held at 10:00 AM on Thursday, September 1, 2016 in the Council Chambers, Municipal Building, 300 North Main Street, Hopewell, VA 23860. Attendance is not required to submit a bid.

AVAILABILITY OF FUNDS: It is understood and agreed between the Bidder and the City that the City shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this quotation or agreement.

WITHDRAWAL OF BID: No bid may be withdrawn for a period of one hundred and twenty (120) days from the date of bid opening unless the bidder has made a clerical error. The bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers substantiating the error with such notice.

Bidding and contracting procedures shall conform to all applicable regulations and provisions of the *City of Hopewell Procurement Ordinance* effective July 1, 2005, as amended; a copy of which is available on the City Attorney's website (www.hopewellva.net) under the tab CODE, Hopewell city code. Click Chapter 2A-Procurement to view the Procurement Ordinance.



April L. Cone,
Purchasing Officer

Please return the bids to the Office of the City Clerk, Second Floor, Municipal Building, and 300 North Main Street, Hopewell, Virginia 23860. Regardless of delivery method of bid, the **outside** of each envelope must clearly indicate the following: *(if bid is delivered by Federal Express, UPS, USPS Priority, etc. or any other means, the outside of each envelope must also clearly indicate):*

**Office of the City Clerk
Second Floor, Municipal Building
300 North Main Street
Hopewell, Virginia 23860**

Closing Date of Bid: September 22, 2016

Commodity Name: HOPEWELL POLICE STATION AND FIRE STATION

Bid # 02-17

1. SCOPE OF THE WORK

The Work covered by these specifications comprises the furnishing of all labor, materials, and equipment for the construction of the Hopewell Police Station and Fire Station, as described in a satisfactory and acceptable manner. The Work includes, but is not limited to the following:

The purposes of the new facilities are to house the functional needs of first responders, department administrators and their equipment/apparatus. The two buildings are designed with offices, bunkrooms, dispatch room, conference/training rooms, food service facilities, and associated public, service and support spaces to meet the program defined by this project.

Fire Station:

The fire station building is generally described containing 30,621 gross square feet of floor area inclusive of an emergency operations center, multiple drive-through fire apparatus bays, an operational fire station, fire administration offices, and public, service, and support spaces and equipment normally found in fire bureau buildings.

Police Station:

The police building is generally described as containing 14,017 gross square feet of floor area inclusive of an emergency dispatch center, an operational police precinct, police administration offices, public service, and support spaces and equipment normally found in police buildings. Each building will be located on separate sites within the City and include associated site development and parking.

These projects include the supply of all materials identified in the project design, and to perform all construction activities required to construct this facility to a level that meets all applicable codes.

2. RESPONSIBILITIES/ QUALITY ASSURANCES

- A. All Work shall comply with all applicable building codes and regulations. The Contractor shall secure all permits as required. A valid business license from the City may be required.
- B. The Contractor must show evidence of being licensed as a **Class A Contractor** and shall provide at least one person who shall be thoroughly trained and experienced in the skills required. This person shall be completely familiar with the design and application of the Work described in these specifications, and who shall be present at all times during progress of the Work, and shall direct all Work performed under these specifications.
- C. All existing utilities, both public and private, shall be protected and their operation shall be maintained throughout the course of Work.

- D. The Owner will not be responsible for the Contractor's loss of tools, materials, etc. The Contractor must safeguard his own equipment and materials at all times.
- E. The Contractor will visit the site and acquaint himself with the existing conditions. The pre-construction meeting between an authorized representative of the Contractor and a representative of the Owner shall be scheduled within ten (10) days after execution of the contract agreement. The Contractor shall, at no time after the site visit, assert that there was any misunderstanding in regard to the nature or extent of the Work or working conditions.
- F. The Owner and patrons will fully occupy the Municipal Building for the duration of the work period. The Contractor shall conduct the work in a safe and professional manner that will minimize disruption of the Owner's normal operations.
- G. The Contractor shall not interfere in any way with the Owner's daily operations. The Contractor shall construct all barricades and protective facilities required for the protection of the public.
- H. Debris shall be disposed of by the end of "every" working day and not stockpiled. Beverage cans, bottles, lunch refuse, cigarette debris, etc. will not be tolerated on the job site except by immediate and proper disposal of on a daily basis. The Contractor may use the on-site disposal facilities at no charge for waste generated by this project. Use of City facilities must comply with all existing restrictions. No food waste is allowed.
- I. Use of the Owner's existing toilet facilities will not be permitted. The Contractor will be required to provide a portable toilet facility and properly clean and maintain the same in a condition acceptable to the Owner. The location of which is to be approved by the Owner.

3. MATERIALS, PRODUCT HANDLING, AND FACILITIES

- A. The Contractor shall use all means necessary to protect materials before, during, and after installation and to protect the work and materials of other trades.

In the event of damage, the Contractor shall immediately make all repairs and replacements necessary to the approval of the Owner's representative and at no additional cost to the Owner.

- B. The Contractor shall have the technical expertise and qualified technical representatives to quickly resolve questions or problems that may arise both during and after the Work is completed.
- C. The Owner will not unload any of the Contractor's material or equipment.
- D. Construction parking, material storage, and staging area will be in an area designated by the Owner. The Contractor will be responsible for the maintenance and security of this area.

- E. The Contractor shall furnish and maintain all temporary ladders, ramps, runways, scaffolds, stairs and similar items required for the proper execution of the Work

4. PROJECT TIME LINE

The Contractor shall be required to start and complete the entire project between **October 15, 2016** and **December 15, 2017**. The Contractor is expected to provide the proper amount of equipment, manpower and materials to meet this schedule.

5. CLEANUP

Upon final completion of the Work, the Contractor shall be responsible for cleaning up any excess materials and /or debris left by his construction crews and subcontractors upon final completion.

6. BOND INFORMATION

A. **Bid Bond:** A bidder's bond or certified check in the amount of five percent (5%) of the amount bid shall accompany bid proposal for the bid to be acceptable.

B. **Performance and Labor and Material Payment Bond:** Upon award of the contract the Contractor shall be required to furnish a performance bond and a labor and material payment bond in the amount of the contract price, as security for faithful performance of the work in strict conformity with the contract documents and for payment of all persons who perform labor and furnish materials in prosecution of the work. The surety on such bonds shall be duly authorized to do business in the Commonwealth of Virginia and be satisfactory to the City.

7. BIDDER DATA

A. Contractors shall have the capability in all respects to perform fully the contract requirements and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance of the contract to the satisfaction of the City. The City, through the advice of the architect, will make the final determination as to the low bidder's ability to fulfill the terms of this contract. Contractor shall submit a completed "**CONTRACTOR'S QUALIFICATION STATEMENT AND QUESTIONNAIRE**" (The required form is attached to this Invitation for Bid).

8. PLANS AND SPECIFICATIONS

Project plans and specifications will be available at 9 N 3rd St, Richmond , VA 23219 (804) 780-1060 (<http://bizportdoes.com/contact-us>). Bidders, suppliers, and other interested parties shall purchase plans and specification copies directly from who will also maintain a listing of all plans holders. The City will not refund printing, shipping or other related costs to any plans holders.

9. OPTION TO USE ESCROW ACCOUNT PROCEDURE FOR RETAINED FUNDS

For construction bids in the amount of \$200,000 or more, Contractor has option to use escrow account procedure for utilization of City retained funds. Contractor must write “Yes” or “No” on the Notice of Escrow Option form attached to this Invitation for Bid.

10. TECHNICAL ASSISTANCE/BID SUBMISSION QUESTIONS

All written questions must be received by the City no later than Friday, September 2, 2016.

Responses to all written questions will be issued by an addendum after **September 9**, 2016. Any addendums issued will be sent to only those bidders listed on the plan holders list. Questions regarding proposal submissions should be directed to the City’s Purchasing Officer, April Cone, at (804) 541-2205 or acone@hopewellva.gov. Technical questions regarding this project should be directed to:

Ms. Katie O’Neal, Architect
C/o RRMM Architects
1317 Executive Blvd.
Chesapeake VA 23320
(757) 622-2828
Email: Koneal@rrmm.com

In order to maintain equal access to information we request that you not contact anyone other than the individuals named above. If there are any changes to the scope of work, addenda will be issued by the Purchasing Agent to all known participants.

11. VIRGINIA STATE CORPORATION COMMISSION (SCC) REGISTRATION INFORMATION

The bidder shall submit the following form with their bid. If bid proposal does not include the State Corporation Commission Form, the bid will be considered non-responsive.

State Corporation Commission Form

Virginia State Corporation Commission (“SCC”) registration information:

The undersigned Bidder:

is a corporation or other business entity with the following SCC identification number:
_____ **-OR-**

is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder’s out- of-state location) **-OR-**

is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned Bidder’s current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the City reserves the right to determine in its sole discretion whether to allow such waiver):

Signature: _____

Date: _____

Name: _____

Print

Title: _____

Name of Firm: _____

BID FORM

This bid is for the Construction of a New Fire Station Building and a New Police Station Building located on two separate sites. The Fire Station Building site is located on Arlington Road and Winston Churchill Drive. The Police Facility is located at City Hall.

Having carefully examined the bid documents including the Invitation to Bid, , General Conditions, Special Conditions, Specifications, Drawings, and Addenda (if any) prepared by the architect, entitled: **Hopewell Fire Station and Hopewell Police Station**, as well as the premises and conditions affecting the work, the undersigned proposes to furnish all labor, supervision, materials, equipment, and services necessary to perform all the work in accordance with the contract documents for the following lump sum amount.

BID PRICE A: BASE BID FOR FIRE STATION FACILITY:

The Lump Sum Bid price for the entire work in the Hopewell Fire Station facility, including the following allowances but exclusive of bid alternates, completed within the time limits and in accordance with the contract documents:

ALLOWANCE BID ITEM 1:

Provide a lump sum allowance of \$10,000.00 for electrical circuit revisions and changes required by the specified "Short Circuit and Protective Device Coordination Study".

ALLOWANCE BID ITEM 2:

Provide a lump sum allowance of \$20,000.00 for "In Building Emergency Communication Coverage" allowance shall include the Contractor having the building tested and the cost of installation. Also shall include electrical work and other associated trades.

BASE BID PRICE A (Sum of Bid Price A and Allowance Bid Items 1 and 2) IS:

_____ Dollars
(Words)

(\$ _____).
(Figures)

BID PRICE B: BASE BID FOR NEW POLICE STATION FACILITY:

The Lump Sum Bid price for the entire work in the Hopewell Police Station facility, including the following allowances but exclusive of bid alternates, completed within the time limits and in accordance with the contract documents:

ALLOWANCE BID ITEM 3:

Provide a lump sum allowance of \$10,000.00 for electrical circuit revisions and changes required by the specified "Short Circuit and Protective Device Coordination Study".

ALLOWANCE BID ITEM 4:

Provide a lump sum allowance of \$20,000.00 for "In Building Emergency Communication

Coverage” allowance shall include the Contractor having the building tested and the cost of installation. Also shall include electrical work and other associated trades.

BASE BID PRICE B (Sum of Bid Price B and Allowance Bid Items 3 and 4) IS:

_____ Dollars
(Words)

(\$ _____).
(Figures)

TOTAL BASE BID PRICE FOR BOTH FACILITIES (Sum of Bid Price A and B):

The Lump Sum Base Bid price for the entire work in the Fire Station and Police Station packages, including any allowances but excluding all Bid Alternates, completed within the time limits and in accordance with the contract documents is:

_____ Dollars
(Words)

(\$ _____).
(Figures)

BID ALTERNATE PRICE: AMOUNT FOR NEW FIRE STATION FACILITY (Optional):

In lieu of providing reinforced CMU back up wythes as indicated at north, south and west exterior walls of Apparatus Bay A141, and at Mezzanine A242, the Owner will consider an alternate turn-key design and construction of reinforced concrete tilt-up panels in same thickness and locations, to serve as the back-up wythe for the brick veneer. The Owner reserves the right to reject this alternate bid for any reason. The cost of this alternate shall include all labor and materials required to meet structural, code and functional requirements equal to or better than the CMU exterior wall system indicated on the drawings and as specified. The Owner’s Architect will make the final determination as to the suitability of the alternate proposal being of comparable quality to the original design. The cost of this Bid Alternate shall also include the structural design of the tilt-up walls by an engineer licensed in Virginia, as well as submission of design calculations and shop drawings for review. Any and all modifications to other systems necessitated by the acceptance of this Bid Alternate shall be included in the Bid Alternate figure as well, including but not limited to, foundations, slab on grade, brick veneer, flashings, copings, roof and floor framing supports, door tracks, concealed wiring systems, site access and layout areas, and all associated engineering redesign of each modification as required. The Lump Sum Alternate Price is:

(ADD or DEDUCT) _____ Dollars
(Words)

(\$ _____).
(Figures)

The contract award will be made to the lowest, qualified Total Base Bid Price for Both Facilities. If it is determined that there are only funds available to construct one facility, the owner reserves the right to negotiate a final price and scope with the lowest, qualified bidder.

In compliance with Invitation for Bid # 02-17 and subject to all conditions thereof and attached thereto, the undersigned offers and agrees if the Bid price and conditions will be accepted within one hundred and twenty (120) calendar days from the date of opening to evaluate, to furnish any and all of the items upon which the prices are quoted, at the price set opposite each item, delivered at the points as specified and as scheduled.

_____ NAME OF ORGANIZATION	_____ TELEPHONE NUMBER
_____ STREET ADDRESS	_____ FAX NUMBER
_____ CITY, STATE, ZIP CODE	_____ EMAIL ADDRESS
_____ NAME (TYPE OR PRINT)	_____ OFFICIAL TITLE
_____ SIGNATURE	_____ DATE
_____ CLASS A VIRGINIA CONTRACTOR #	_____ IRS I.D. #

ADDENDA:

The above stated bid is based on the Contract Documents and the following additional addenda issued subsequent to the release of the drawings and specifications for bids. (List all addenda with dates, if issued. If no addenda are issued, write the word "none".)

Addenda # _____	Date _____	Addenda # _____	Date _____
Addenda # _____	Date _____	Addenda # _____	Date _____
Addenda # _____	Date _____	Addenda # _____	Date _____
Addenda # _____	Date _____	Addenda # _____	Date _____

CONTRACTOR'S QUALIFICATION STATEMENT AND QUESTIONNAIRE

Submitted to: Office of the City Clerk

Address: Room 216
Municipal Building
300 N. Main Street
Hopewell, Virginia 23860

Name:

Mailing Address:

Street Address:
(If other than mailing address)

Telephone Number: ()

Facsimile Number: ()

E-mail Address:

Name, telephone number, and email address of Contractor's point of contact concerning this questionnaire:

Current number of Contractor's permanent employees of office to perform work:

Check one of the following, as applicable:

Corporation Partnership Individual Limited Liability Company

Affiliate (list all subsidiaries; parent organization; and affiliated)

Other _____

Check below if the Contractor requests that all information shall be considered a trade secret or proprietary information protected from the Freedom of Information Act disclosure.

Yes No

ORGANIZATION

1. How many years has your organization been in business as a Contractor?

2. How many years has your organization been in business under its present business name?

If any, under what other or former names has your organization operated?

3. If your organization is a corporation, answer the following:
 - a. Date of incorporation:
 - b. State of incorporation:
 - c. President's name, telephone #, and length of time in this position:
 - d. Vice President's name, telephone #, and length of time in this position:
 - e. Treasurer's name, telephone number, and length of time in this position:
 - f. Specify whether Company is Subchapter S Corporation:

Yes No

4. If your organization is a partnership, answer the following:
 - a. Date of Organization:
 - b. Type of partnership (if applicable):
 - c. Name(s) of general partner(s), telephone #, and length of time in this position:

5. If your organization is individually owned, answer the following:

Date of Organization:

Name of owner, telephone #, and length of time in this position:

If the form of your organization is other than those listed above, describe it and name the principals.

6. If you answer "yes" to any of the following, please provide the name, address, phone number, persons to contact, and circumstances related to the question on a separate attachment.
 - a. Has the Contractor or any officer, director, or owner thereof, had judgments entered against it/him/her within the past ten years for the breach of contracts for governmental or non-governmental construction, including, but not limited to, design-build or construction management:

Yes No

- b. Has the Contractor or any officer, director, or owner, project manager, procurement manager, or chief financial officer thereof, been convicted within the past ten years of a crime related to governmental or non-governmental construction or contracting, including, but not limited to a violation of (1) Article 4 (§ 11-72, et. Seq.), (2) the Virginia Governmental Frauds Act (§ 18.2-498.1, et Seq.), (3) Chapter 4.2 (§59.1-68.6, et. Seq.) of Title 59.1, or (4) any substantially similar law of the United States or another state:

Yes No

Is the Contractor or any officer, director, or owner thereof, currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government:

Yes No

LICENSING (local, state, and/or nationwide)

List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable.

EXPERIENCE

1. List the categories of work that your organization normally performs with its own forces.
2. Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)
 - a. Has your organization ever failed to complete any work awarded to it?
 - b. Are there any judgments, claims arbitration proceeding or suits pending or outstanding against your organization or its officers?
 - c. Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?

- d. If the answer to any of the questions above is yes, provide the name of the Project and the Owner, including Company name, address and phone number associated with the event.
- e. List any federal, state, or local government agencies, which have excluded or barred your organization or any of its members, from bidding on construction projects. (Attach documents as necessary.)

Explain briefly the events leading to such exclusion. (Attach documents as necessary)

Attach copies of any letters, which rescind exclusions.

- f. Has the Contractor ever been denied Prequalification by any Public entity in Virginia in the last ten years? If so, provide the date, the name and address of the entity, the reason for denial, and attach a copy of the notice of denial.

3. List all projects that the specific office which will perform this work has in progress. Do not include projects being performed by a home office or branch office other than the specific office that will perform this work.

- a. Include for each, the Owner's name, address, project location, and contact person with phone number of each project.
- b. State total worth of work in progress and under contract.
- c. List the name of the project manager and site superintendent who had direct responsibility for each project.
- d. Clearly indicate those projects which are receiving involvement of any key personnel proposed for this project.

4. Attach a list of all completed projects that your organization has completed in the past five (5) years.

The list shall be limited to projects performed by the specific office from which the project will be managed. Do not include projects being performed by a home office or branch office other than the specific office that will perform this work.

- a. Include for each, the Owner's name, address, project location, and contact person with phone number for each project.

- b. State total worth of work in progress and under contract.
 - c. List the name of the project manager and site superintendent who had direct responsibility for each project.
 - d. State the original construction contract final completion date and the actual completion date of each project. If project was not completed on time, please explain why.
 - e. Clearly indicate those projects which are receiving involvement of any key personnel proposed for this project as included above.
5. Describe the management system and scheduling techniques which would be employed to assure that this Project is maintained on schedule and with sufficient quality control and safety management systems:
 - a. Attach a listing of key personnel (i.e., project manager and site superintendent) which are to comprise the management team for this project. Include the following information for each proposed team member.
 - Name, general qualifications, and resume.
 - Position and duties within proposed Team.
 - Length of time with Organization.
 - Experience, describing similar past project involvement.
6. Describe all work anticipated to be provided by your organization's in-house forces on this Project.
7. Provide a list of major subcontractors that your organization commonly utilizes for site work, masonry work, mechanical, and electrical work that you anticipate would work on this project.

REFERENCES

1. Trade References (major subcontractors, suppliers, manufactures):
2. Bank References:
3. Surety:
 - a. Name of Surety/Bonding Company:
 - b. Rating of Surety/Bonding Company (according to Bests Key Rating Guide). List other recognized rating company if not from above.

c. Name and address of agent:

d. Current bonding capacity with a contract surety/bonding company:

For any single project:

For all projects:

Current line of bonding credit that company has extended to the Contractor (i.e., current outstanding bonds).

- e. Have Performance or Payment Bond claims ever been made to a surety for this Contractor on any project, past or present? If the answer is yes, please describe the claim, provide the name and address of the company of person making the claim, and state the resolution of the claim:
- f. Has any company refused to bond the Contractor on any project in the last five years? If the answer is yes, provide the name and address of the surety company and specify the reasons given for the refusal:

FINANCING (Financial information will be kept confidential)

1. Certify below that the Contractor can obtain a Surety Bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the Owner (100% Performance and Payment Bond) and can provide evidence thereof, if required.

Yes

No

2. Has the Contractor ever had a Bankruptcy Petition filed **in** its name, voluntarily or involuntarily?

Yes

No

If the answer is yes, specify the date, circumstances, and resolution.

3. Is the Contractor currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity?

Yes

No

If the answer is yes, specify details, circumstances, and prospects for resolution.

OTHER

Attach any additional information that the Contractor believes will assist the Owner in evaluating their qualifications for this Project.

The undersigned Contractor shall be a Class A Contractor under Title 54.1-1100 of the Code of Virginia, as amended. The undersigned Contractor agrees to comply with and be bound by this Prequalification Procedure. The undersigned hereby agrees that the Prequalification Procedure does not constitute or give rise to any contract with City of Hopewell.

The undersigned hereby acknowledges receipt of Addenda (if any):

Addendum No. _____ dated: _____

Addendum No. _____ dated: _____

Addendum No. _____ dated: _____

The undersigned certifies under oath that the information contained in the Application, Qualification Statement, and Questionnaire and attachments thereto, and any other information submitted with this Application is complete, true, and correct so as not to be misleading.

Firm Name

Address

City, State, Zip Code

Signature

Title

Date

COMMONWEALTH OF VIRGINIA
COUNTY/CITY OF _____, to-wit:

I, _____, a Notary Public in and for the County/City
and State aforesaid, do hereby certify that _____, Contractor,
whose name is signed to the foregoing writing, this _____ day of _____,
_____, has acknowledged the same before me in my County/City and State aforesaid.

Given under my hand this _____ day of _____, _____.

(Notary Public)

My Commission Expires: _____

END OF CONTRACTOR'S QUALIFICATION STATEMENT AND QUESTIONNAIRE

NOTICE OF ESCROW OPTION

IF THIS IS A BID FOR CONSTRUCTION AS DEFINED IN VIRGINIA CODE SECTION 2.2-4334
IN THE AMOUNT OF \$200,000.00, OR MORE, I/WE ELECT TO UTILIZE THE ESCROW
ACCOUNT PROCEDURE DESCRIBED IN THE PROVISIONS OF THIS BID IF DETERMINED
TO BE THE SUCCESSFUL LOW BIDDER(S) _____

(WRITE "YES" OR "NO")

INTEREST ON RETAINAGE

At the time the Contractor submits a bid, the Contractor shall have the option to use the escrow account procedure for utilization of City retained funds by so indicating in the space provided in the bid documents. In the event the Contractor elects to use the escrow account procedure, the "Escrow Agreement" form included in the Bid and Contract shall be executed and submitted to the City within 15 calendar days after notification of award of the bid. If the "Escrow Agreement" form is not submitted as noted herein before, the Contractor shall forfeit such rights to the use of the escrow account procedure. In order to have retained funds paid to an escrow agent, the Contractor, the escrow agent and the surety shall execute an "Escrow Agreement" form and submit same to the City for approval. The Contractor's escrow agent shall be a trust company, bank or savings and loan institution with its principal office located in the Commonwealth of Virginia. The "Escrow Agreement" form shall contain the complete address of the escrow agent and surety, and the executed "Escrow Agreement" will be authority for the City to make payment of retained funds to the escrow agent. After approving the agreement, the City will pay to the escrow agent the funds retained as provided herein except that funds retained for lack of progress or other deficiencies on the part of the Contractor will not be paid to the escrow agent. The escrow agent may, in accordance with the stipulations contained in the "Escrow Agreement", invest the funds paid into the escrow account and pay earnings on such investments to the Contractor or release the funds to the Contractor provided such funds are fully secured by approved securities.

Retained funds invested and securities held as collateral for retainage may be released only as and when directed by the City. When the final estimate is released for voucher, the City will direct the escrow agent to settle the escrow account by paying the Contractor or the City monies due them as determined by the City. The City reserves the right to recall retained funds and to release same to the surety upon receipt of written request from the Contractor or in the event of default.

This section shall be applicable only to contracts for \$200,000.00, or more, for the construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines, and pumping stations.

This section shall not apply to contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph, or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

If this contract includes payment of interest on retained funds, the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay the specified penalty for each day exceeding the completion date stated in the contract.

Any subcontract for such public project, which provides for similar progress payments shall be subject to the provisions of this section.

**CITY OF HOPEWELL
CONSTRUCTION CONTRACT
ESCROW AGREEMENT**

THIS AGREEMENT, made and entered into this ____ day of _____, 20 ____, by,
between and among the City of Hopewell (City), _____
_____(Contractor),
_____(Name of Bank),
_____(Address of Bank), a trust
company, bank, or savings and loan institution with its principal office located in the
Commonwealth (hereinafter referred to collectively as "Bank") and _____
_____("Surety") provides:

I.

The City and the Contractor have entered into a contract with respect to:

_____,("the contract").
This Agreement is pursuant to, but in no way amends or modifies, the contract. Payments
made hereunder or the release of funds from escrow shall not be deemed approval or
acceptance of performance by the Contractor.

II.

In order to assure full and satisfactory performance by the Contractor of its obligations
under the contract, the City is required thereby to retain certain amounts otherwise due the
Contractor. The Contractor has, with the approval of the City, elected to have these retained
amounts held in escrow by the Bank. This agreement sets forth the terms of the escrow. The Bank
shall not be deemed a party to, bound by, or required to inquire into the terms of, the contract or
any other instrument or agreement between the City and the Contractor.

III.

The City shall from time to time pursuant to its contract pay to the Bank amounts retained
by it under the contract. Except as to amounts actually withdrawn from escrow by the City, the
Contractor shall look solely to the Bank for the payment of funds retained under the contract and
paid by the City to the Bank.

The risk of loss by diminution of the principal of any funds invested under the terms of this
contract shall be solely upon the Contractor.

Funds and securities held by the Bank pursuant to this Escrow Agreement shall not be subject to levy, garnishment, attachment, lien, or other process whatsoever. Contractor agrees not to assign, pledge, discount, sell or otherwise transfer or dispose of his interest in the escrow account or any part thereof, except to the Surety.

IV.

Upon receipt of checks drawn by the City and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same and deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrowed funds in any security not approved.

V.

The following securities, and none other, are approved securities for all purposes of this Agreement.

1. United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills,
2. Bonds, notes and other evidences of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States,
3. Bonds or notes of the Commonwealth of Virginia,
4. Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's or Moody's Investors Service rating of at least "A", and
5. Certificates of deposit issued by commercial banks located within the Commonwealth, including, but not limited to, those insured by the Bank and its affiliates.
6. Any bonds, notes, or other evidences of indebtedness listed in Sections (1) through (3) may be purchased pursuant to a repurchase agreement with a bank, within or without the Commonwealth of Virginia having a combined capital, surplus and undivided profit of not less than \$25,000,000, provided the obligation of the Bank to repurchase is within the time limitations established for

investments as set forth herein. The repurchase agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collateralized by the securities themselves, and the securities have on the date of the repurchase agreement a fair market value equal to at least 100% of the amount of the repurchase obligation of the Bank, and the securities are held by a third party, and segregated from other securities owned by the Bank.

No security is approved hereunder which matures more than five years after the date of its purchase by the Bank or deposit by the Contractor.

VI.

The Contractor may from time to time withdraw the whole or any portion of the escrow funds by depositing with the Bank approved securities in an amount equal to, or in excess of, the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower of par or market value, the latter as determined by the Bank. Any securities so deposited shall thereupon become a part of the escrowed fund.

Upon receipt of a direction signed by the City Manager, Director of Finance, or Director of Public Works, the Bank shall pay the principal of the fund, or any specified amount thereof, to the City. Such payment shall be made in cash as soon as is practicable after receipt of the direction.

Upon receipt of a direction signed by the City Manager, Director of Finance, or Director of Public Works, the Bank shall pay and deliver the principal of the fund, or any specified amount thereof, to the Contractor, in cash or in kind, as may be specified by the Contractor. Such payment and delivery shall be made as soon as is practicable after receipt of the direction.

VII.

For its services hereunder the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same, by the Contractor.

VIII.

The net income earned and received upon the principal of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration such income shall be deemed a part of the principal of the fund.

IX.

The Surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the contract are not affected hereby.

WITNESS the following signatures, all as of the day and year first above written.

CITY OF HOPEWELL

BY _____
CITY MANAGER

ATTEST: _____
CITY CLERK

CONTRACTOR

BY _____
OFFICER, PARTNER OR OWNER

BANK

BY _____
PRESIDENT/VICE-PRESIDENT

SURETY

BY _____
ATTORNEY-IN-FACT

GENERAL TERMS AND CONDITIONS

City of Hopewell, Virginia

Public Safety Building

- A. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and the City of Hopewell, Virginia ("City"); any litigation with respect thereto shall be brought in the courts of the City. The contractor shall comply with all applicable federal, state and local laws, rules and regulations. This compliance includes obtaining a City business license, if required, before work is performed.
- B. **EMPLOYMENT DISCRIMINATION/DRUG-FREE WORKPLACE BY CONTRACTOR:** By submitting the bids/proposals, the bidders/offerors certify to the City that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with the City to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the City. (Code of Virginia, § 2.2-4343.1E).

Every contract over Ten Thousand Dollars (\$10,000) shall include the following provisions:

During the performance of this contract, the contractor agrees as follows:

- i. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or other basis prohibited by state law relating to discrimination employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- ii. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
- iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- iv. To provide a drug-free workplace for the contractor's employees.
- v. To post in conspicuous places, available to employees and applicants for employment, a statement notifying them that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- vi. To state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

The contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order

over Ten Thousand Dollars (\$10,000) so that the provisions will be binding upon each subcontractor or vendor.

- C. **DIRECT TAXES:** All bids/proposals shall be submitted exclusive of direct federal, state, and local taxes. However, if the bidder/offeror believes that certain taxes are properly payable by the City, he may list such taxes separately in each case directly below the respective item bid/proposal price. Tax exemption certification will be furnished on request.
- D. **INDEMNITY:** All contractors will agree to defend, indemnify and hold harmless, the City and its council, officers, employees, agents, and other representatives from and against any and all claims, damages, demands, losses, costs and expenses, including attorney's fees, and any other losses of any kind or nature whatsoever including claims for bodily injuries, illness, disease, or death and physical property loss or damage in favor of contractor, its sub- contractors, their employees, agents, and third parties arising during the performance of services and resulting from tort, strict liability, or negligent acts or omissions of contractor, its sub- contractors and their employees or agents under the agreement, or resulting from breaches of contract, whatever by statute or otherwise.

Each contractor shall assume the responsibility for damage to or loss of its material, equipment or facilities located at any site and, in order to effect this limitation of liability, each contractor will agree to insure or self-insure such property against any such risk.

- E. **SALES TAXES:** The City is exempt from payment of state sales and use tax on all tangible personal property purchased or leased for the City's use or consumption. A certificate of exemption will be furnished upon request.
- F. **QUOTATION FORM:** The bidder/offeror must sign and properly fill out all forms in this request for bid/proposal or be subject to being declared unresponsive. If unable to submit a bid/proposal, please sign and return this solicitation form, advising reason for no bid/proposal.
- G. **CONTRACTOR'S DEFAULT:** In case of default of a contractor, the City may procure the articles on service from other sources and hold the contractor responsible for any excess cost incurred. If the contractor fails to complete the work under the contract within the time for completion or the contract completion date, the contractor shall be liable for any and all actual damages sustained as a result of delay. In addition to damages for delay, the contractor shall also be liable for any and all actual damages sustained by the City as a result of any other breach of the contract, including, but not limited to defective work and abandonment of the contract.
- H. **COMPUTATION OF TIME FOR DISCOUNTS:** Time in connection with discount offered will be computed from date of delivery of the supplies or materials to carrier when final inspection and acceptance are at those points or from date correct invoice is received if latter is later than the date of delivery.
- I. **ETHICS IN PUBLIC CONTRACTING:** By submitting bids/proposals, the bidders/offerors certify that the bids/proposals are made without collusion or fraud and that the bidders/offerors have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with the bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- J. **GOVERNMENTAL RESTRICTIONS:** In the event any governmental restrictions may be imposed which would necessitate alteration of the materials, quality, workmanship, or performance of the items offered in the bid/proposal prior to their delivery, it shall be the responsibility of the successful bidder/offeror to notify the City at once, indicating in writing the specific regulation which requires such alterations. The City reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.

- K. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into a written contract with the City, the contractor will certify that the contractor does not, and shall not during the performance of the contract for goods and services in, or for, the City, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- L. **DEBARMENT STATUS:** By submitting bids/proposals, the bidders/offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- M. **ANTITRUST:** By entering into a contract, the contractor will convey, sell, assign, and transfer to the City, all rights, title and interest in and to all causes of action taken it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the City under said contract.
- N. **PAYMENT:** See Section 36 and Section 37 of the Special Conditions of the Construction Contract.
- O. **PRECEDENCE OF TERMS:** Paragraphs A-M of these General Terms and Conditions shall apply in all instances. If, however, there is a conflict between any of the other General Terms and Conditions and any special terms and conditions in this solicitation, the special terms and conditions shall apply.
- P. **TESTING AND INSPECTION:** The City reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- Q. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the City.
- R. **CHANGES TO THE CONTRACT:** See Section 38 of the Special Conditions of the Construction Contract.
- S. **DEFAULT:** In case of failure of contractor to deliver goods or services in accordance with the contract, the City, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the City may have.
- T. **AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or non-stock corporation, limited liability company, business trust, limited partnership, or other entity, or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with the City pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. The City may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- U. **INSURANCE:** All contractors shall secure and maintain in force, at their own expense all required forms of insurance and payment bonds to insure the completion for the work under a contract to the satisfaction of the City and without damage to, or claims against, the City. The contractor shall provide satisfactory evidence of bonds and insurance on behalf of the sub-contractors, before entering into an agreement to sublet any part of the work to be done under the contract.

The following performance and payment bonds and forms of insurance shall be secured by the contractor to cover all work under contract and to protect the contractor, the City, and general public against any damage from claims in connection with the performance of the contract. The bonds and insurance shall be by companies duly authorized to do business in Virginia. Certificates of insurance, naming the City as an

additional insured for each type of coverage, shall be required.

At the discretion of the City's purchasing agent, bidders/offerors may be required to submit with their bids/proposals, a bid/proposal bond, or a certified check, in an amount to be determined by the purchasing agent, which shall be forfeited to the City as liquidated damages upon the bidder's/offeror's failure to execute a contract awarded or upon the bidder's/offeror's failure to furnish any required performance or payment bonds in connection with a contract awarded.

At the discretion of the purchasing agent, the winning contractor(s) may be required to submit a performance and payment bond to the City which shall be evoked upon the contractor's failure to execute a contract awarded or the failure to satisfactorily complete work for which a contract or purchase order was awarded. Performance bond and payment bond in the amount of one hundred (100) percent of contract price will be required as security of contract, or security for payment of all persons performing labor and furnishing materials in connection with the contract, and protecting the City from all damages or claims resulting from, or in connection with the performance of the contract or purchase order.

The performance bond and payment bond shall bind the surety company to protect the City from damages, claims or costs by failure of the contractor to make corrective action due to its financial solvency or for any other cause whatever.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits; require that the City of Hopewell, Virginia be added as an additional named insured on contractor's policy.
2. Employers Liability - \$500,000.
3. Comprehensive general liability for bodily injury liability and property damage liability shall be provided as to limits specified.
4. Contractor's protective liability shall be provided for bodily injury liability and property damage liability.
5. Fire and extended coverage shall be provided on the completed builder risk form if specified in bid specifications.
6. The contractor shall require each subcontractor to carry Worker Compensation Insurance and public liability and property damages liability.
7. Commercial General Liability - \$1,000,000 combined single limit and \$2,000,000 aggregate combined limit. The City of Hopewell, Virginia is to be named as an additional named insured with respect to the services being procured. This coverage is to include Products and Completed Operations Coverage.
8. Automobile Liability – bodily injury and property damage shall be provided as to limits set forth in the contract specifications.

The contractor shall execute and deliver to the City copies of all insurance certificates. Executed copies of the performance bond shall become a part of all copies of the contract.

- v. **ADVERTISING:** In the event a contract is awarded for supplies, equipment, or services resulting from a bid/proposal, no indication of such sales or services to the City, will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the City, or any department, or institution of the City, has purchased or uses the contractor's products or services.
- w. **AUDIT:** The contractor shall retain all books, records, and other documents relative to a contract for five (5) years after final payment, or until audited by the City, whichever is sooner. The City, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during

said period.

- X. **AWARD OF CONTRACT:** Any award will be made to the lowest responsive and responsible bidder/offeror. Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The City reserves the right to reject any and all bids/proposals in whole or in part, to waive any informality, and to delete items prior to making an award.
- Y. **BID/PROPOSAL ACCEPTANCE PERIOD:** Any bid/proposal in response to this solicitation shall be valid for 120 days. At the end of the 120 days the bid/proposal may be withdrawn at the written request of the bidder/offeror. If the bid/proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- Z. **CANCELLATION OF CONTRACT:** The City reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 30 days written notice to the contractor. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- AA. **EXTRA CHARGES NOT ALLOWED:** The bid/proposal price shall be for complete installation ready for the City's use, and shall include all applicable freight and installation charges; extra charges will not be allowed without a properly executed change order.
- BB. **MINORITY/WOMEN-OWNED BUSINESSES SUBCONTRACTING AND REPORTING:** Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to minority and/or women-owned businesses. Names of firms may be available from the City. When such business has been subcontracted to minority or women-owned businesses, upon completion of the contract, the contractor agrees to furnish the City the following information: name of business, addresses, and phone numbers, the total dollar amount subcontracted and type of product/service provided.
- CC. **PREPARATION AND SUBMISSION OF BIDS/PROPOSALS:** Bids/proposals must give the full business address of the bidder/offeror and be signed by the bidder's/offeror's authorized signature. Bids/proposals by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or any authorized representative, followed by the designation of the person signing. Bids/proposals by corporations must be signed with the legal name of the corporation followed by the name of the state in which it is incorporated and by the signature and designation of the president, secretary, or other person authorized to bind the corporation. The name of each person signing shall also be typed or printed below the signature. A bid/proposal by a person, who affixes to the signature the word "President," "Secretary," "Agent" or other designation without disclosing the principal, may be held to be the bid/proposal of the individual signing. When requested by the City, satisfactory evidence of the authority of the officer signing in behalf of the corporation, or other entity, shall be furnished.
- DD. **WITHDRAWAL OR MODIFICATION OF BIDS/PROPOSALS:** Bids/proposals may be withdrawn or modified by written notice received from bidders/offerors prior to the deadline fixed for bid/proposal receipt. The withdrawal or modification may be made by the person signing the bid/proposal or by an individual who is authorized on the face of the bid. Written modifications may be made on the bid/proposal form itself, on the envelope in which the bid/proposal is enclosed, or on a separate document. Written modifications, whether the original is delivered, or transmitted by facsimile, email, or otherwise, must be signed by the person making the modification or withdrawal.
- EE. **RECEIPT AND OPENING THE BIDS/PROPOSALS:** It is the responsibility of the bidder/offeror to assure that the bid/proposal is delivered to the place designated for receipt of bids/proposals and prior to the time set for receipt of bids/proposals. Bids/proposals received after the time designated for receipt of bids/proposals will not be considered. Bids/proposals will be opened at the time and place advertised, and

their contents made public for the information of bidders/offerors and others interested who may be present either in person or by representative. The officer or agent of the City, whose duty it is to open bids/proposals, will decide when the specified time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid/proposal not properly addressed and identified.

FF. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids/offers are cancelled or rejected, the City reserves the right granted by §2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the City whenever such low bid exceeds the City's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds which were budgeted to and by the City for the contract prior to the issuance of the written solicitation. Negotiations with the low bidder/offeror may include both modifications of the bid/offer price and the scope of work/specifications to be performed. The City shall initiate such negotiations by written notice to the lowest responsive, responsible bidder/offeror that its bid exceeds the available funds and that the City wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the city and the lowest responsive, responsible bidder/offeror.

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1. DEFINITIONS

Whenever used in these Special Conditions of the Construction Contract ("Special Conditions") or in the Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof:

Architect, Engineer, Architect/Engineer or A/E: The term used to designate the architect and/or the engineer that contracts with the Owner to provide the architectural and engineering services for the Project. The A/E is a separate contractor and not an agent of the Owner. The term includes any associates or consultants employed by the A/E to assist in providing the A/E services.

Beneficial Occupancy: The condition after Substantial Completion but prior to the Final Completion Date at which time the Project, or portion thereof, is sufficiently complete and systems operational such that the Owner could, after obtaining necessary approvals and certificates, occupy and utilize the space for its intended use. Guarantees and warranties applicable to that portion of the Work begin on the date the Owner accepts the Project, or a portion thereof, for such Beneficial Occupancy, unless otherwise specified in the Supplemental Special Conditions or by separate agreement.

Change Order: A document issued on or after the effective date of the contract between Owner and Contractor which is agreed to by the Contractor and approved by the Owner, and which authorizes an addition, deletion or revision in the Work, including any adjustment in the Contract Price and/or the Contract Completion Date. The term Change Order shall also include written orders to proceed issued pursuant to Section 38 (a) (3). A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract.

Construction: The term used to include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities, including any draining, dredging, excavation, grading or similar work upon real property.

Contract: The contract between Owner and Contractor.

Contract Completion Date: The date by which the Work must be substantially complete. The Contract Completion Date is customarily established in the Notice to Proceed, based on the Time for Completion. In some instances, however, the Contract contains a mandatory Contract Completion Date, which shall be stated in the invitation for bid or request for proposals, as applicable.

Contract Documents: The Contract and any documents expressly incorporated therein. Such incorporated documents customarily include the bid submitted by the Contractor, these Special Conditions, any Supplemental Special Conditions, any special conditions, the Plans and the Specifications, and all modifications, including addenda and Change Orders.

Contract Price: The total compensation payable to the Contractor for performing the Work, subject to modification by Change Order.

Contractor: The person with whom the Owner has entered into a contractual agreement to do the Work on the Project.

Date of Commencement: The date as indicated in the Notice to Proceed, the receipt of the earliest building permit, or a date mutually agreed to between the Owner and Contractor in writing, whichever is the latest.

Day(s): Calendar day(s) unless otherwise noted.

Defective: An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents or does not meet the requirements of inspections, standards, tests or approvals required by the Contract Documents, or Work that has been damaged prior to

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the A/E's recommendation of Final Payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion or Beneficial Occupancy).

Drawing: A page or sheet of the Plans which presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Work. The graphic representations include, but are not limited to, plan views, elevations, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables and/or pictures.

Emergency: Any unforeseen situation, combination of circumstances, or a resulting state that poses imminent danger to health, life or property.

Final Completion Date: The date of the Owner's acceptance of the Work from the Contractor upon confirmation from the Architect/Engineer and the Contractor that the Work is totally complete in accordance with Section 44(b).

Field Order: A written order issued by the A/E which clarifies or explains the Plans or Specifications, or any portion or detail thereof, without changing the design, the Contract Price, the Time for Completion or the Contract Completion Date.

Final Payment: The final payment that the Contractor receives pursuant to the applicable provisions of Section 36, except in the event no final payment is made due to termination of the Contract under either Sections 41 or 42. In the event of a termination for cause under Section 41, the Final Payment shall be when the termination became effective. In the event of a termination for convenience under Section 42, the Final Payment shall be either the payment of compensation for termination that the Contractor receives according to the provisions of Section 42, or the Owner's determination that no compensation for termination is due the Contractor under Section 42, as the case may be.

Float: The excess time included in a construction schedule to accommodate such items as inclement weather and associated delays, equipment failures, and other such unscheduled events. It is the contingency time associated with a path or chain of activities and represents the amount of time by which the early finish date of an activity may be delayed without impacting the critical path and delaying the overall completion of the Project. Any difference in time between the Contractor's approved early completion date and the Contract Completion Date shall be considered a part of the Project Float.

Float, Free: The time (in days) by which an activity may be delayed or lengthened without impacting the start day of any activity following in the chain.

Float, Total: The difference (in days) between the maximum time available within which to perform an activity and the duration of an activity. It represents the time by which an activity may be delayed or lengthened without impacting the Time for Completion or the Contract Completion Date.

Notice: All written notices, including demands, instructions, claims, approvals and disapprovals, required or authorized under the Contract Documents. Any written notice by either party to the Contract shall be sufficiently given by any one or combination of the following, whichever shall first occur: (1) delivered by hand to the last known business address of the person to whom the notice is due; (2) delivered by hand to the person's authorized agent, representative or officer wherever such Person may be found; or (3) enclosed in a postage prepaid envelope addressed to such last known business address and delivered to a United States Postal Service official or mailbox. Notice is effective upon such delivery. All notices to the Owner should be directed to the Project Manager.

If the Owner and the Contractor agree in writing that Notices transmitted by facsimile (Fax) or e-mail are acceptable for the Project, such Notice shall be transmitted to the Fax number or e-mail address listed in the agreement and shall have a designated space for the Fax or e-mail Notice recipient to acknowledge receipt by authorized signature and date. The Fax or e-mail Notice with authorized signature acknowledging receipt shall be Faxed or e-mailed back to the sender. The Faxed or e-mailed Notice shall be effective on the date it

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is acknowledged by authorized signature. All Faxed or e-mailed Notices shall also be sent by hard copy, which shall be effective upon delivery, as provided herein. Notice shall be effective upon the date of acknowledgment of the Faxed or e-mailed Notice or upon the date of delivery, whichever occurs first.

Notice to Proceed: A written notice given by the Owner to the Contractor (with a copy to A/E) fixing the date on which the Contract time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents. The Notice to Proceed will customarily identify a Contract Completion Date.

Owner: The public body with whom the Contractor has entered into a contractual agreement and for whom the Work or services is to be provided. The term "Owner", as used herein, shall also mean the city of Hopewell, Virginia.

Person: This term includes any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

Plans: The term used to describe the group or set of Project-specific drawings which are included in the Contract Documents.

Project: The term used instead of the specific or proper assigned title of the entire undertaking which includes, but is not limited to, the Work.

Project Inspector: One or more Persons employed by the Owner to inspect the Work for the Owner and/or to document and maintain records of activities at the Site to the extent required by the Owner. The Owner shall notify the Contractor in writing of the appointment of such Project Inspector(s). The scope of the Project Inspector's authority with respect to the Contractor is limited to that indicated in Section 16 (e) and (f) and as supplemented by the Owner in writing to the Project Inspector and to the Contractor.

Project Manager: The Project Manager as used herein shall be the Owner's designated representative on the Project. The Project Manager shall be the Person through whom the Owner generally conveys written decisions and Notices. All Notices due the Owner and all information required to be conveyed to the Owner shall be conveyed to the Project Manager. The scope of the Project Manager's authority is limited to that authorized by the Owner, who shall provide written information to the Contractor at the Preconstruction meeting defining those limits. Upon receipt of such information, the Contractor shall be on notice that it cannot rely on any decisions of the Project Manager outside the scope of the Project Manager's authority. Nothing herein shall be construed to prevent the Owner from issuing any Notice directly to the Contractor. The Owner may change the Project Manager from time to time and may, in the event that the Project Manager is absent, disabled or otherwise temporarily unable to fulfill the Project Manager's duties, appoint an interim Project Manager.

Provide: Shall mean furnish and install ready for its intended use.

Schedule of Values: The schedule prepared by the Contractor and acceptable to the Owner which indicates the value of that portion of the Contract Price to be paid for each trade or major component of the Work.

Site: Shall mean the location at which the Work is performed or is to be performed

Section: A numbered paragraph of these Special Conditions, including any ("Subsection") thereof.

Specifications: That part of the Contract Documents containing the written administrative requirements and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for the building official to determine code compliance and for the Contractor to perform the Work. (The Special Conditions, any Supplemental Special Conditions, various bidding information and instructions, and blank copies of various forms to be used during the execution of the Work are usually bound with the Specifications.)

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Subcontractor: A Person having a direct contract with Contractor or with any other Subcontractor for the performance of the Work. Subcontractor includes any Person who provides on-site labor but does not include any Person who only furnishes or supplies materials for the Project.

Submittals: All shop, fabrication, setting and installation drawings, diagrams, illustrations, schedules, samples, and other data required by the Contract Documents which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the Contractor to illustrate material or equipment conformance of some portion of the Work with the requirements of the Contract Documents.

Substantial Completion: The condition when the Owner agrees that the Work, or a specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by the Owner for the purposes for which it was intended. The Owner at its sole discretion may, after obtaining the necessary approvals and certificates, take Beneficial Occupancy at this time or choose to wait to occupy until after the Final Completion Date.

Supplemental Special Conditions: That part of the Contract Documents which amends or supplements the Special Conditions.

Supplier: A manufacturer, fabricator, distributor, material-man or vendor who provides material for the Project but does not provide on-site labor.

Time for Completion: The number of consecutive calendar days following the Date of Commencement which the Contractor has to substantially complete all Work.

Underground Facilities: All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which are or have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

Work: The services performed under the Contract including, but not limited to, furnishing labor, and furnishing and incorporating materials and equipment into the Construction. The Work also includes the entire completed Construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents or which may reasonably be expected to be provided as part of a complete, code compliant and functioning system for those systems depicted in the Plans and Specifications.

2. CONTRACT DOCUMENTS

- (a) The Contract, the Workers' Compensation Certificate of Coverage, the Standard Performance Bond, the Standard Labor and Material Payment Bond, Request for Bid, the Schedule of Values and Certificate for Payment, the Affidavit of Payments of Claims, the Contractor's Certificate of Substantial Completion, and the Contractor's Certificate of Completion issued by the City of Hopewell, Virginia are forms incorporated in these Special Conditions by reference and are made a part hereof to the same extent as though fully set forth herein. They must be used by the Contractor for their respective purposes.
- (b) All time limits stated in the Contract Documents, including but not limited to the Time for Completion are of the essence of the Contract.
- (c) The Contract shall be signed by the Owner and the Contractor in as many original counterparts as may be mutually agreed upon, each of which shall be considered an original.

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- (d) Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents shall have the intended effect. In the event of conflicts among the Contract Documents, the Contract Documents shall take precedence in the following order: the Contract; the Supplemental Special Conditions; the General Terms and Conditions; the Special Terms and Conditions; the Specifications with attachments; and the Plans.
- (e) If any provision of the Contract shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision.

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6. **TIME FOR COMPLETION**

- (a) The Time for Completion shall be designated by the Owner on any invitation for bids, request for proposals, or other pre-bid/proposal documents. In some instances, the Time for Completion may be stated on the Invitation for Bids, Request for Proposals, or other prebid/pre-proposal document in the form of a Contract Completion Date. The Work must be substantially completed by the Time for Completion or the Contract Completion Date. Unless otherwise specified, the Final Completion Date shall be within thirty (30) days after the date of Substantial Completion.
- (b) The Time for Completion shall be stated in the Contract between Owner and Contractor and shall become a binding part of the Contract upon which the Owner may rely in planning the use of the facilities to be constructed and for all other purposes. If the Contractor fails to substantially complete the Work within the Time for Completion or Contract Completion Date, as set forth in the Contract, he shall be subject to payment of actual damages incurred by the Owner or liquidated damages, if provided for in the Contract.
- (c) The Contractor, in submitting its bid or proposal, acknowledges that he has taken into consideration normal weather conditions. Normal weather does not mean statistically average weather, but rather means a range of weather patterns which might be anticipated based on weather data for the past ten (10) years (i.e., conditions which are not extremely unusual). Normal weather conditions shall be determined from the public historical records available, including the U.S. Department of Commerce, Local Climatological Data Sheets, National Oceanic and Atmospheric Administration / Environmental Data and Information Service, National Climatic Center and National Weather Service. The data sheets to be used shall be those for the locality or localities closest to the site of the Work. No additional compensation will be paid to the Contractor because of adverse weather conditions; however, an extension of time for abnormal weather will be considered by the Owner under the following conditions, all of which must be strictly complied with by the Contractor:
 - (1) The request for additional time shall be further substantiated by weather data collected during the period of delay at the Site. Said data must demonstrate that an actual departure from normal weather occurred at the Site during the dates in question.
 - (2) The extension requested must be supported by a delay in completion of the entire Project shown on the critical path of the accepted critical path method (CPM) Schedule or the approved bar graph schedule required for the Project. Extensions will be granted only for delays in completion of the Project, not for that portion of any delay which consumes only "Float" time.

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- (3) A request for extension of time based on abnormal weather must be made in writing within fourteen (14) calendar days of the completion of the calendar month during which abnormal weather is claimed at the Site.
- (4) All of the evidence and data supporting the request (including both historical data and the recordings at the Site during the time of delay) must be furnished to the Owner before any consideration will be given to the request. That supporting data shall be submitted by the end of the calendar month following the month for which the request is made.
- (d) The failure by the Contractor to comply with any and all of the conditions in (c) above shall constitute a waiver of claims for the extension of time for abnormal weather.
- (e) The Contractor represents and agrees that it has taken into account in its bid or proposal the requirements of the bid or proposal documents, the Contract Documents, local conditions, availability of materials, equipment, and labor, and any other factors which may affect the performance of the Work. The Contractor agrees and warrants that it will achieve Substantial Completion of the Work to allow the Owner to have Beneficial Occupancy not later than the Time for Completion or Contract Completion Date. The Contractor agrees and warrants that the Final Completion date, including "punch list" items, shall not be later than thirty (30) days after achieving Substantial Completion.

7. CONDITIONS AT SITE

- (a) The Contractor shall have visited the Site prior to bidding or submitting its proposal and is totally responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site, and the character and extent of existing conditions, improvements and work within or adjacent to the Site. Claims that result from the Contractor's failure to do so will be deemed waived.
- (b) If, in the performance of the Contract, hidden physical conditions of a building being modified are exposed revealing unusual or materially different conditions from those ordinarily encountered or inherent in work of this nature, or if subsurface or latent conditions at the Site are found which are materially different from those frequently present in the locality or from those indicated in the Contract Documents, the Contractor must report such conditions to the Owner and to the Architect/Engineer before the conditions are disturbed. Upon such notice, or upon observation of such conditions, the Architect/Engineer shall promptly propose such changes in the Contract Documents necessary to conform to the different conditions. Any change in the cost of the Work or additional time needed for completion must be requested pursuant to Sections 38, 39 and/or 43 of these Special Conditions.
- (c) If the Contractor, during the course of the Work, observes the existence of any material which he knows, should know, or has reason to believe is hazardous to human health, the Contractor shall promptly notify the Owner. The Owner will provide the Contractor with instructions regarding the disposition of the material. Prior to receipt of special instructions from the Owner, the Contractor shall not perform any Work involving the material or any Work causing the material to be less accessible.

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9. SUBCONTRACTS

- (a) The Contractor shall, as soon as practicable after the signing of the Contract, notify the Owner and Architect/Engineer in writing of the names of all Subcontractors proposed for the principal parts of the Work and of such others as the Architect/Engineer may direct. Where the specifications

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establish qualifications or criteria for Subcontractors, manufacturers, or individuals performing Work on the Project, the Contractor shall be responsible for ascertaining that those proposed meet the criteria or qualifications. The Contractor shall not employ any Subcontractor that the Owner may, within a reasonable time, object to as unsuitable. Neither the Owner nor the Architect/Engineer shall direct the Contractor to contract with any particular Subcontractor unless provided in the Specifications or Invitation for Bids or Request for Proposals.

- (b) The Owner may select a particular Subcontractor for a certain part of the Work and designate on the Invitation for Bids or Request for Proposals that the Subcontractor shall be used for the part of the Work indicated and that the Subcontractor has agreed to perform the Work for the subcontract amount stipulated on the bid or proposal form. The Contractor shall include the stipulated amount plus the Contractor markups in the bid or proposal. In such case, the Contractor shall be responsible for that Subcontractor and its work and the Subcontractor shall be responsible to the Contractor for its work just as if the Contractor had selected the Subcontractor. If the Contractor has a reasonable objection to the Subcontractor being assigned, then the Contractor shall note the exception in the bid or proposal and the reason for the exception and maintain appropriate provisions for coordinating the work of the Subcontractor. The Owner, at its sole discretion, may accept the Contractor's bid or proposal with the exception noted and contract separately with the Subcontractor under the provisions Section 10 or assign a different Subcontractor.
- (c) The Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor, the Schedule of Values and requests for payment submitted by the Contractor and any other documentation submitted by the Contractor which would tend to show what amounts are due and payable by the Contractor to the Subcontractor.
- (d) The Contractor shall be fully responsible to the Owner for all acts and omissions of its agents and employees and all succeeding tiers of Subcontractors and Suppliers performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between Owner or Architect/Engineer and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner or Architect/Engineer to pay for or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization, except as may otherwise be required by law.
- (e) The Contractor shall be fully responsible for its invitees at the Site and for those of its Subcontractors, Suppliers, and the Subcontractor's employees, and other agents, including any acts or omissions of such invitees.
- (f) The Contractor agrees that it alone is responsible for all dealings with Subcontractors and Suppliers, and their subcontractors, employees and invitees, including, but not limited to, the Subcontractors' or Suppliers' claims, demands, actions, disputes and similar matters unless specifically provided otherwise by the Contract or by statute.

10. SEPARATE CONTRACTS

- (a) The Owner reserves the right to let other contracts in connection with the Project, the Work under which may proceed simultaneously with the execution of the Contract. The Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work. The Contractor shall cooperate with them and shall take all reasonable action to coordinate its Work with theirs. If the Owner has listed other separate contracts in the Invitation for Bids or Request for Proposals which it expects to proceed simultaneously with the Work of the Contractor, and has included the estimated timing of such other contracts in the Invitation for Bids or Request for Proposals, the Contractor shall integrate the schedule of those separate contracts into its scheduling. The Contractor shall make every reasonable effort to assist the Owner in maintaining the schedule for all separate contracts. If the work performed by the separate contractor is defective or performed so as to prevent or threaten to prevent the Contractor

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from carrying out its Work according to the Contract, the Contractor shall immediately notify the Owner and the Architect/Engineer upon discovering such conditions.

- (b) If a dispute arises between the Contractor and any separate contractor(s) as to their responsibility for cleaning up as required by Sections 31 (c) and 31 (d) of these Special Conditions, the Owner may clean up and charge the cost thereof to the respective contractors in proportion to their responsibility. If a contractor disputes the Owner's apportionment of clean-up costs, it shall be that contractor's burden to demonstrate and prove the correct apportionment.

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12. "ALL RISK" BUILDER'S RISK INSURANCE

- (a) **Contractor Controlled During Construction:** The Contractor, at its cost, shall obtain and maintain in the names of the Owner and the Contractor "all-risk" builder's risk insurance (or fire, extended coverage, vandalism and malicious mischief insurance, if approved by the Owner and the public works director, upon the entire structure or structures on which the Work is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the insurable value thereof (i.e., construction costs, soft costs, FF&E, and the residual value of the existing structure to remain). Such insurance may include a deductible provision if the Owner so provides in the Supplemental Special Conditions, in which case the Contractor will be liable for such deductions, whenever a claim arises. The loss, if any, is to be made adjustable with and payable to the Owner, in accordance with its interests, as they may appear. The Owner, its officers, employees and its agents, shall be named as an additional insured in any policy of insurance issued. Written evidence of the insurance shall be filed with the Owner no later than thirty (30) days following the award of the Contract. In the event of cancellation of insurance, not less than thirty (30) days' prior written notice must be sent to the Owner. A copy of the policy of insurance shall be given to the Owner upon demand.
- (b) **Owner Controlled During Construction:** The Owner maintains insurance coverage on its buildings. On re-roofing, renovation, and interior modifications of existing building projects where the Owner continues to occupy the building, or a portion thereof, while the Work is being performed, the Contractor shall provide "all-risk" builder's risk insurance, as described above, in an amount equal to one hundred percent (100%) of the cost of the Work (i.e., construction costs, soft costs, and FF&E costs). In those instances, the Contract (between the Owner and Contractor for the Project) shall expressly exclude the Project from the requirements of Subsection 12(a). The Contractor is responsible for providing any desired coverage for Contractor's or Subcontractors' buildings, equipment, materials, tools or supplies that are on-Site.
- (c) The value of the builder's risk insurance shall exclude the costs of excavations, backfills, foundations, underground utilities and site work.

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14. PATENTS

The Contractor shall obtain all licenses necessary to use any invention, article, appliance, process or technique of whatever kind and shall pay all royalties and license fees. The Contractor shall indemnify and hold harmless the City, its council, agents and employees, harmless against any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner. If, before using any invention, process, technique, article or appliance specifically named in the specifications or plans the Contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise the City and

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the Architect/Engineer. The City may direct that some other invention, process, technique, article or appliance be used.

15. ARCHITECT/ENGINEER'S STATUS

- (a) The Architect/Engineer shall have authority to endeavor to secure the faithful performance by Owner and Contractor of the Work. The A/E shall review the Submittals for conformance to the requirements of the Contract Documents and return copies to the Contractor with appropriate notations. The A/E shall interpret the requirements of the Plans and Specifications and issue Field Orders to the Contractor as may be required. The A/E shall recommend to the Owner suspension of the Work (in whole or in part) whenever such suspension may be necessary to ensure the proper execution of the Contract. The A/E shall have authority to reject, in writing, Work, including material, installation or workmanship, which does not conform to the requirements of the Plans and Specifications. The A/E shall determine the progress and quality of the Work, subject to the right of the Owner to make an overriding decision to the contrary. Upon request by the Contractor, the Architect/Engineer shall confirm, in writing within fourteen (14) days, any oral order or determination made by the A/E.
- (b) The Architect/Engineer shall have no authority to approve or order changes in the Work which alter the design concept or which call for an extension of time or a change in the Contract Price.
- (c) Although the Owner is bound by the terms of the Contract, including the Plans and Specifications, the Owner shall have the right, but not the duty, to countermand any decision of the Architect/Engineer and to follow or reject the advice of the Architect/Engineer, including but not limited to acceptance of the Work, as the Owner deems best. In those instances where the Architect/Engineer has been given authority to act, the Architect/Engineer shall promptly do so, but in the case of disagreement between the Architect/Engineer and the Owner, the decision of the Owner shall be final. The Contractor shall not be bound by any determination, interpretation or decision of the Architect/Engineer, if it is later determined that the same is not in accord with the Contract Documents. The party taking issue with the determination, interpretation or decision of the Architect/Engineer shall give the other party written notice of such fact within fourteen (14) days after the determination, interpretation or decision is communicated by the Architect/Engineer. In the actual performance of the Work, however, the Contractor shall, in the first instance, proceed in accordance with instructions given by the Architect/Engineer unless the Owner and the Contractor mutually agree that the Contractor shall proceed otherwise.
- (d) All orders from the Owner to the Contractor shall either be transmitted through the Architect/Engineer or communicated directly to the Contractor and the Architect/Engineer by the Owner.
- (e) Should the Owner choose to employ another or different Architect/Engineer, the status of the Architect/Engineer so employed shall be the same as that of the former Architect/Engineer.
- (f) The Architect/Engineer will provide to the Owner and the Contractor after each visit to the Site, a written report indicating the date, time of day, weather conditions and the names of the persons representing the Architect/Engineer who participated in the visit. The report will advise the Owner of any problems that were noted and shall compare the Architect/Engineer's observations of the actual progress of the Work with that reported by the Contractor. On the basis of its on-Site observations, the Architect/Engineer will make every reasonable effort to guard the Owner against defects and deficiencies in the Work. The A/E shall have the authority to inspect the Work, to note and report to the Owner, Defective Work and deviations from the Contract Documents, to reject same, and to recommend to the Owner the suspension of the Work when necessary to prevent Defective Work from proceeding or being covered.

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- (g) The Architect/Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures (other than those expressly specified in Contract Documents), or for safety precautions and programs in connection with the Work, and shall not be responsible for the Contractor's failure to carry out the Contractor's own responsibilities.
- (h) The Architect/Engineer generally conveys written decisions and notices to the Contractor through the Project Manager and shall generally receive information and Notices from the Contractor through the Project Manager unless otherwise agreed. The Owner may delegate from the Architect/Engineer to the Project Manager certain inspection, verification, acceptance, rejection, and administrative duties and authority, but any such delegation shall be in writing and a copy thereof provided to the Contractor.
- (i) The provisions of this Section are included as information only to describe the relationship between the Owner, A/E, and Contractor. No failure of the A/E to act in accordance with this Section shall relieve the Contractor from its obligations under the Contract or create any rights in favor of the Contractor.

16. INSPECTION

- (a) All material and workmanship shall be subject to inspection, examination and testing by the Owner, the Architect/Engineer, the Project Inspector, authorized inspectors and authorized independent testing entities at any and all times during manufacture and/or Construction. The Architect/Engineer and the Owner shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the Site. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in Section 41 of these Special Conditions, the Contractor and surety being liable for any damage to the same extent as provided in Section 41 for termination thereunder.
- (b) Site inspections, tests conducted on Site or tests of materials gathered on Site, which the Contract requires to be performed by independent testing entities, shall be contracted and paid for by the Owner. Examples of such tests are the testing of cast-in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in (d) below, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the Owner for the cost of reexamination and retesting. Although conducted by independent testing entities, the Owner will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or American Society for Testing and Materials (ASTM). If fees are charged for such tests and certifications, they shall be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires to pay, together with any inspections and tests which he chooses to perform for its own purposes, but are not required by the Contract.
- (c) Where Work is related to or dependent on the Defective Work, the Contractor shall stop such related or dependent Work until the Defective Work or deficiency is corrected or an alternative solution is presented that is satisfactory to the Owner. Where Work is rejected because of defective material or workmanship, the Contractor shall stop like Work in other areas or locations on the Project until the matter is resolved and the Owner has approved corrective measures.

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- (d) Should it be considered necessary or advisable by Owner or the Architect/Engineer at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall on request promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of the Contractor or its Subcontractors, the Contractor shall bear all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing, and Contractor's cost of material and labor necessary for replacement including a markup of fifteen (15%) percent for overhead and profit shall be paid to the Contractor and it shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time. Notwithstanding the foregoing, the Contractor shall be responsible for all costs and expenses in removing and replacing the Work if the Contractor had covered the Work prior to any inspection or test contrary to the instructions of the A/E, Owner or Project Inspector.
- (e) The Project Inspector has the authority to recommend to the Architect/Engineer and the Owner that the Work be suspended when in the Project inspector's judgment the Contract Documents are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.
- (f) The Project Inspector has the right and the authority to:
 - (1) Inspect all construction materials, equipment, and supplies for quality and for compliance with the Contract Documents and/or approved shop drawings and Submittals.
 - (2) Inspect workmanship for compliance with the standards described in the Contract Documents.
 - (3) Observe and report on all tests and inspections performed by the Contractor.
 - (4) Recommend rejection of Work which does not conform to requirements of the Contract Documents.
 - (5) Keep a record of construction activities, tests, inspections, and reports.
 - (6) Attend all joint Site construction meetings and inspections held by the Owner and/or the A/E with the Contractor.
 - (7) Check materials and equipment, together with documentation related thereto, delivered for conformance with approved Submittals and the Contract.
 - (8) Check installations for proper workmanship and conformance with shop drawing and installation instructions.
 - (9) Assist in the review and verification of the schedule of values & certificate for payment, submitted by the Contractor each month.
 - (10) Do all things for or on behalf of the Owner as the Owner may subsequently direct in writing.
- (g) The Project Inspector has no authority to:

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- (1) Authorize deviations from the Contract Documents;
 - (2) Enter into the area of responsibility of the Contractor's superintendent;
 - (3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the Work;
 - (4) Authorize or suggest that the Owner occupy the Project, in whole or in part; or
 - (5) Issue a certificate for payment.
- (h) The duties of the Project Inspector are for the benefit of the Owner only and not for the Contractor. The Contractor may not rely upon any act, statement, or failure to act on the part of the Project Inspector, nor shall the failure of the Project Inspector to properly perform its duties in any way excuse Defective Work or otherwise improper performance of the Contract by the Contractor.

17. SUPERINTENDENCE BY CONTRACTOR

- (a) The Contractor shall have a competent foreman or superintendent, satisfactory to the Architect/Engineer and the Owner, on the Site at all times during the progress of the Work. The superintendent or foreman shall be familiar with and be able to read and understand the Plans and Specifications, and be capable of communicating orally and in writing with the Owner's inspectors and the Contractor's workers. The Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The Contractor shall notify the Owner, in writing, of any proposed change in superintendent, including the reason therefor, prior to making such change.
- (b) The Contractor shall, at all times, enforce strict discipline and good order among the workers on the Project, and shall not employ on the Work, or contract with, any unfit person, anyone not skilled in the Work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the Owner or the Owner's separate contractors and their subcontractors.
- (c) The Owner may, in writing, require the Contractor to remove from the Site any employee or Subcontractor's employee the Owner deems to be incompetent, careless, not working in harmony with others on the Site, or otherwise objectionable, but the Owner shall have no obligation to do so.

18. CONSTRUCTION SUPERVISION, METHODS AND PROCEDURES

- (a) The Contractor shall be solely responsible for supervising and directing the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and for coordinating all portions of the Work under the Contract, except where otherwise specified in the Contract Documents. However, the Contractor shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract. The Contractor is solely responsible to the Owner that the finished Work complies with the Contract Documents.

The Contractor shall be solely responsible for health and safety precautions and programs for workers and others in connection with the Work. No inspection by, knowledge on the part of, or acquiescence by the Architect or Engineer, the Project Inspector, the Owner, the Owner's employees and agents, or any other entity whatever shall relieve the Contractor from its sole

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responsibility for compliance with the requirements of the Contract or its sole responsibility for health and safety programs and precautions.

- (b) If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to Architect/Engineer, subject to the Owner's right to disapprove. The Contractor must submit its written request for the substitution to the Architect/Engineer with sufficient information to allow the Architect/Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract.
- (c) The divisions and sections of the Specifications and the identification of any drawings shall not control the Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

19. SCHEDULE OF THE WORK

- (a) **General:** The Contractor is responsible for the scheduling and sequencing of the Work, for coordinating the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. The Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date and receive payment in accordance with Section 36 for the Work completed each period. However, the date established by the Contract Documents as the deadline for achieving Substantial Completion must be used in all schedules as the date on which Substantial Completion will be achieved. The time (in days) between the Contractor's planned early completion and the Time for Completion is part of the Project "Total Float" time and will be used as such. Extensions of time pursuant to Sections 38, 39, and 43, damages for delay, and all other matters between the Owner and the Contractor will be determined using the contractually required Substantial Completion date, not an early Substantial Completion date planned by the Contractor.

Within two (2) weeks after the Contractor signs the Contract, unless otherwise extended by the Owner at the time of the signing, the Contractor shall prepare and submit to the Owner, with a copy to the Architect/Engineer, a preliminary bar graph schedule for accomplishing the Work based upon the Time for Completion stated in the Contract. The preliminary schedule shall be in sufficient detail to show the sequencing of the various trades for each floor level, wing or work area. The Owner will notify the Contractor of its acceptance of or objections to the preliminary schedule within fifteen (15) days of receipt by the Owner. A fully complete Project schedule for accomplishing the Work must be submitted in like manner no later than sixty (60) days after the Contract is signed by the Owner.

The Owner's failure to reject or its acceptance of any schedule, graph, chart, recovery schedule, updated schedule, plan of action, etc. shall not constitute a representation or warranty by the Owner, including but not limited to a representation or warranty that the schedule is feasible or practical nor shall any such acceptance or failure to reject relieve the Contractor from sole responsibility for completing the Work within the time allowed. No progress payments will be payable to the Contractor until after it has submitted a preliminary schedule which is acceptable to the Owner. Neither the second progress payment nor any subsequent payment shall be payable to the Contractor until it has submitted a fully complete Project schedule accepted by the Owner. Nor shall subsequent progress payments be payable to the Contractor unless and until it submits the monthly bar graphs or status reports required by Section 19(d) herein or unless and until the Contractor provides any recovery schedule pursuant to Section 19(e) herein.

Failure to provide a satisfactory preliminary or fully complete Project schedule within the time limits stated above shall be a breach of contract for which the Owner may terminate the Contract in the manner provided in Section 41 of these Special Conditions.

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The fully complete Project schedule for accomplishing the Work shall be of the type set forth in subparagraph (1) or (2) below, as appropriate:

- (1) For Contracts with a price of \$1,500,000 or less, a bar graph schedule will satisfy the above requirement. The schedule shall indicate the estimated starting and completion dates for each major element of the Work. See (b) below.
- (2) For Contracts with a price over \$1,500,000, a CPM schedule shall be utilized to control the planning and scheduling of the Work. The CPM schedule shall be the responsibility of the Contractor and shall be paid for by the Contractor. See (c) below.

- (b) **Bar Graph Schedule:** Where a bar graph schedule is required, it shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of the Work by trade and by area, level, or zone, and shall schedule dates for all salient features, including but not limited to the placing of orders for materials, submission of shop drawings and other Submittals for approval, approval of shop drawings by Architect/Engineer, the manufacture and delivery of material, the testing and the installation of materials, supplies and equipment, and all Work activities to be performed by the Contractor.

The Contractor shall allow sufficient time in its schedule for the A/E to conduct whatever associated reviews or inspections may be required under the A/E's contract with the Owner. If the A/E and the Contractor are unable to agree as to what constitutes sufficient time, the Owner shall determine the appropriate duration for such Architect/Engineer activities. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

- (c) **CPM Schedule:** Where a CPM schedule is required, it shall be in the time-scaled precedence format using the Contractor's logic and time estimates. The CPM schedule shall be drawn or plotted with activities grouped or zoned by Work area or subcontract as opposed to a random (or scattered) format.

The CPM schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail and logic which will schedule all salient features of the Work, including not only the actual construction Work for each trade, but also the submission of shop drawings and other Submittals for approval, approval of shop drawings by Architect/Engineer, placing of orders for materials, the manufacture and delivery of materials, the testing and installation of materials and equipment, and all Work activities to be performed by the Contractor. Failure to include any element of Work required for the performance of the Contract shall not excuse the Contractor from completing all Work required within the Time for Completion, Contract Completion Date and any interim deadlines established by the Contract.

The Contractor shall allow sufficient time in its schedule for the A/E to conduct whatever associated reviews or inspections as may be required under the A/E's contract with the Owner. If the A/E and the Contractor are unable to agree as to what constitutes sufficient time, the Owner shall determine the appropriate duration for such Architect/Engineer activities. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

When completed, the CPM schedule shall be submitted to the Architect/Engineer and the Owner

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for review. The CPM schedule will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total Float" and "Free Float" shall be indicated for all activities. Float time, whether "Free Float" or "Total Float" as defined in Section 1, shall not be considered for the exclusive use or benefit of either the Owner or the Contractor, but must be allocated in the best interest of completing the Work within the Time for Completion or the Contract Completion Date. Extensions to the Time for Completion or the Contract Completion Date, when granted by Change Order, will be granted only when equitable time adjustment exceeds the Total Float in the activity or path of activities affected by the change provided that the Owner has reasonably provided information necessary to allow for the orderly progression of the Work. On contracts with a price over \$5,000,000, the CPM schedule shall also show what part of the Contract Price (expressed in U.S. dollars) is attributable to each activity on the schedule and shall be in agreement with the Schedule of Values, the sum of which for all activities shall equal the total Contract Price. The CPM schedule shall have no line-item activities longer than thirty (30) days in duration, and activities shall be included to provide sufficient detail for effectively managing the sequence of the Work. When acceptable to the Owner and Architect/Engineer as to compliance with the requirements of this Section, the schedule shall become the CPM schedule for the Project. Acceptance of the schedule by the Owner does not indicate agreement with, or responsibility for, the proposed or actual duration of any activity or logic shown on the accepted schedule.

- (d) **Monthly Project Reports:** The Contractor shall review progress not less than each month, but as often as necessary to properly manage the Project and stay on schedule. The Contractor shall collect and preserve information on Change Orders, including extensions of time. The Contractor shall evaluate this information and update the latest accepted schedule as often as necessary to finish within the Time for Completion or before the Contract Completion Date. The Contractor shall submit to the A/E along with the Contractor's monthly request for payment a copy of the bar graph schedule annotated to show the current progress. For projects requiring a CPM schedule, the Contractor shall submit a monthly report of the status of all activities. The bar graph schedule or monthly status report submitted with each periodic request for payment shall show the Work completed to date in comparison with the Work scheduled for completion, including but not limited to the dates for the beginning and completion of the placing of orders; the manufacture, testing and installation of materials, supplies and equipment. The form shall be approved by the A/E and the Owner; however, a bar graph or a CPM schedule marked, colored or annotated to reflect the above will usually satisfy this requirement. If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, the Contractor must indicate in writing in the report what measures it is taking and plans to take to bring each such element back on schedule and to ensure that the Time for Completion or Contract Completion Date is not exceeded.
- (e) **Progress Delay:** Should any of the following conditions exist, the Owner may require the Contractor to prepare, at no extra cost to the Owner, a plan of action and a recovery schedule for completing the Work by the Time for Completion or the Contract Completion Date:
- (1) The Contractor's monthly project report indicates delays that are, in the opinion of the A/E or the Owner, of sufficient magnitude that the Contractor's ability to complete the Work by the scheduled Time for Completion or the Contract Completion Date is brought into question;
 - (2) The CPM schedule sorted by early finish shows the Contractor to be thirty (30) or more days behind the critical path schedule at any time during construction up to thirty (30) days prior to scheduled Substantial Completion date;
 - (3) The Contractor desires to make changes in the logic (sequencing of Work) or the planned duration of future activities of the CPM schedule which, in the opinion of the Architect/Engineer or the Owner, are of a major nature.

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The plan of action and recovery schedule, when required, shall explain and display how the Contractor intends to regain compliance with the current accepted, fully completed, Project CPM schedule, as updated by approved Change Orders.

The plan of action, when required, shall be submitted to the Owner for review within two (2) business days of the Contractor receiving the Owner's written demand. The recovery schedule, when required, shall be submitted to the Owner within five (5) calendar days of the Contractor's receiving the Owner's written demand.

- (f) **Early Completion of Project:** The Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date. However, such planned early completion shall be for the Contractor's convenience only and shall not create any additional rights of the Contractor or obligations of the Owner under the Contract, nor shall it change the Time for Completion or the Contract Completion Date. The Contractor shall not be required to pay damages to the Owner because of its failure to achieve Substantial Completion by its planned earlier date. Likewise, the Owner shall not pay the Contractor any additional compensation for achieving Substantial Completion early nor will the Owner owe the Contractor any compensation should the Owner, its officers, employees, or agents cause the Contractor not to achieve Substantial Completion earlier than the date required by the Contract Documents.

If the Contractor seeks to change the Time for Completion or the Contract Completion Date to reflect an earlier completion date, the Contractor may request or propose such a change. The Owner may, but is not required to, accept such proposal. However, a change in the Time for Completion or the Contract Completion Date shall be accomplished only by Change Order. If the Contractor's proposal to change the Time for Completion or the Contract Completion Date is accepted, a Change Order will be issued stating that all references in the Contract, including these Special Conditions, to the Time for Completion or the Contract Completion Date shall thereafter refer to the date as modified, and all rights and obligations, including the Contractor's liability for actual damages, delay damages and/or liquidated damages, shall be determined in relation to the date, as modified.

20. SCHEDULE OF VALUES AND CERTIFICATE FOR PAYMENT

- (a) Before submittal of the first partial payment request under the Contract, the Contractor shall prepare for review and approval of the Architect/Engineer and the Owner, a schedule of the estimated values listed by trades or by specification sections of the Work, totaling the Contract Price. Where the total project has multiple parts or phases, the Contractor shall prepare appropriate Schedules of Values to facilitate reviews and justifications for payments.

All requests for payment shall be made in the ASTM Unifomat II structure on the Schedule of Values and Certificate for Payment. Succeeding pages may be on continuation sheets or a computerized spreadsheet which is in the same format and which contains the same information. Where a computerized spreadsheet is used, one copy of the entire Schedule of Values shall be provided to the Owner in an agreed electronic format (e.g. EXCEL) with the initial request for payment.

- (b) If the Contractor requests, or intends to request, payment for materials stored in an approved and secure manner, the Schedule of Values must indicate the amount for labor and the amount for materials, and in a supplement thereto must include an itemized list of materials for that trade or Work section. The material breakdown shall be in sufficient detail to allow verification of the quantities required for the Project, the quantities delivered, the Work completed, and the quantities stored on or off Site.
- (c) The "Value of Work Completed" portion of the Schedule of Values form shall be completed, the Contractor's certification completed and signed, and the appropriate substantiating material

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attached to each certificate for payment. Such substantiating material includes, but is not limited to, invoices for materials, delivery tickets, time sheets, payroll records, daily job logs/records, and similar materials which, in the opinion of the Owner and the A/E, are necessary or sufficient to justify payment of the amount requested.

- (d) The labor progress for any task or activity shall be calculated based upon the percentage of Work complete up to fifty percent (50%) of the completion of the task or activity. Thereafter, the evaluation of labor progress will be based upon the effort required to complete that task or activity. The material progress shall be calculated as the invoiced dollar cost of materials used in relationship to the amount estimated as necessary to complete a particular element of Work. When calculating material progress, credit shall be given for installed material as well as that stored on the Site and any material stored off Site which has been certified by the Architect/Engineer in accordance with Section 36 of these Special Conditions.
- (e) Should Work included in previous form submittals, and for which payment has been made, subsequently be identified, by tests, inspection, or other means, as not acceptable or not conforming to Contract requirements, the "Value of Work Completed" portion of the first form submitted after such identification shall be modified to reduce the "completed" value of that Work by deleting the value of that which has been identified as not acceptable or nonconforming.

21. ACCESS TO WORK

The Architect/Engineer, the Owner, the Project Manager, the Owner's inspectors and other testing personnel, inspectors from the Department of Labor and Industry, and others authorized by the Owner, shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

22. SURVEYS AND LAYOUT

- (a) The Owner shall furnish the Contractor all necessary documents showing property lines and the location of existing buildings and improvements. The Contractor shall provide competent surveying and engineering services to execute the Work in accordance with the Contract and shall be responsible for the accuracy of these surveying and engineering services.
- (b) The Owner shall provide such general reference points and benchmarks on the Site as will enable the Contractor to proceed with the Work will be established in the Plans and Specifications. If the Contractor finds that any previously established reference points have been lost or destroyed, it shall promptly notify the Architect/Engineer.
- (c) The Contractor shall protect and preserve the established benchmarks and monuments and shall make no changes in locations without written notice to the Architect/Engineer and the written approval from the Owner. Any of these which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior written approval of the Owner, be replaced and accurately located by the Contractor.

23. PLANS AND SPECIFICATIONS

- (a) The general character and scope of the Work are illustrated by the Plans and the Specifications. If the Contractor deems additional detail or information to be needed, The Contractor shall request the same in writing from the Architect/Engineer. The Contractor's request shall precisely state the detail or information needed and shall explain why it is needed. The Contractor shall also indicate a date when the requested information is required. The Architect/Engineer shall provide by Field Order such further detail and information as is necessary by the date required so long as the date indicated is reasonable. Any additional drawings and instructions supplied to the Contractor shall be consistent with the Contract Documents, shall be true developments thereof, and shall be so prepared that they can be reasonably interpreted as a part thereof. The Contractor shall carry out the

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Work in accordance with the additional detail drawings and instructions at no additional cost or time to the Owner.

- (b) If the Contractor finds a conflict, error, omission, or other discrepancy in the Plans or Specifications, the Contractor shall notify the Architect/Engineer in writing as soon as possible, but before proceeding with the affected Work. The Architect/Engineer shall issue a clarification by Field Order to the Contractor stating the correct requirements. If the Contractor deems the Field Order requires additional Work, the Contractor shall notify the A/E of such prior to proceeding with that Work and shall submit a request for Change Order along with a detailed substantiating cost proposal through the A/E to the Owner within fourteen (14) calendar days. If such conflict, error, omission or other discrepancy in Plans or Specifications was reasonably apparent or with reasonable diligence should have been apparent to the Contractor prior to submitting its bid or proposal, and the Contractor failed to submit questions to the A/E in the time and manner required by the Instructions to bidders or request for proposal, then any claims shall be deemed waived and the Contractor shall not be entitled to additional compensation or time, or entitled to sue the Owner based on such conflict, error, omission or other discrepancy. If the Contractor performs any Work, or is delayed in performing any Work, where such Work involves a conflict, error, omission, or other discrepancy in the Plans and Specifications that the Contractor knew about, or with reasonable diligence should have known about, and fails to notify the A/E and Owner as required, the Contractor shall assume full responsibility for such performance or delay and shall bear all costs attributable to correcting any Work requiring correction or to any delay, and such conflict, error, omission, or other discrepancy shall not be the basis for a claim, cause of action or right to sue the Owner.
- (c) In case of differences between small and large scale drawings, the large scale drawings shall govern. Where on any of the drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work.
- (d) Where the word "similar" appears on the drawings, it shall be interpreted in its general sense and not as meaning identical, and all details shall be worked out in relation to their location and their connection with other parts of the Work.
- (e) The specifications are divided into several parts, or sections, for convenience only, since the entire specifications must be considered as a whole. The divisions of the specifications are not intended to control the Contractor in dividing the Work among Subcontractors or to limit the Work performed by any trade. The Contractor shall be solely responsible for the coordination of the trades, Subcontractors and vendors engaged in the Work and for the compensation of the trades, Subcontractors and vendors for the Work performed.
- (f) Measurements or dimensions shown on the drawings for Site features, utilities and structures shall be verified at the Site by the Contractor before commencing the Work. The Contractor shall not scale measurements or dimensions from the drawings. If there are discrepancies, the Architect/Engineer shall be consulted. If new Work is to connect to, match with or be provided in existing Work, the Contractor shall verify the actual existing conditions and necessary dimensions prior to ordering or fabrication.
- (g) As-Built Drawings: The Contractor shall maintain at the Site for the Owner one copy of all drawings, specifications, addenda, approved shop or setting drawings, Change Orders and other modifications (collectively referred to herein as "As-Built Drawings") in good order and marked to record all changes as they occur during construction. These shall be available to the Architect/Engineer, the Owner, the Project Inspector, the Owner's other inspectors and to the Owner's testing personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction. The representation of such variations shall include such supplementary notes, symbols, legends, and details as may be necessary to clearly show the as-built construction.

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- (h) Record Drawings: Upon completion of the Work and prior to the final inspection, the Contractor shall deliver to the Architect/Engineer, for preparation of the record drawings, one complete set of "As-Built Drawings".

24. SUBMITTALS

- (a) The Contractor shall submit a listing of all Submittals required by the Architect/Engineer or which the Contractor identifies as necessary, fixing the dates for the submission of shop or setting drawings, samples and product data. The listing shall be in a format acceptable to the Architect/Engineer. The Contractor shall identify all Submittals with the Owner's project code number.
- (b) Submittals shall be forwarded to the Architect/Engineer for approval if required by the specifications or if requested by the Architect/Engineer or the Owner. No part of the Work dealt with by a Submittal shall be ordered, fabricated or installed by the Contractor, save at the Contractor's own risk, until such approval has been given.

Working drawings, shop drawings and/or Submittals for fire protection, fire alarm, fire detection and security systems shall be submitted to, and approved by, the building official prior to ordering, fabricating or installing such systems. The Contractor shall be solely responsible for obtaining such approval. No part of the Work involving such systems shall be ordered, fabricated or installed by the Contractor until such approval has been obtained.

- (c) The Contractor shall furnish to the Architect/Engineer for approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the Work. When Submittals are required by the Contract for materials, the Contractor shall furnish full information concerning the material or articles which it contemplates incorporating in the Work. When required, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without required approval shall be at the risk of subsequent rejection.
- (d) Unless otherwise indicated or required elsewhere in the specifications, shop drawings shall be submitted in the form of one reproducible tracing and three blue line or black line prints. Catalog cuts, product data and other non-reproducible literature, except certificates, shall be submitted in six (6) copies minimum, of which three (3) will be retained by the Architect/Engineer and the remainder will be returned to the Contractor. As is mutually agreeable to the Owner, Architect/Engineer, and Contractor, Submittals may be provided in electronic format in lieu of hardcopy format.
- (e) Submittals shall be accompanied by a letter of transmittal which shall list the project code number, the Submittals included, the specification section number applicable to each, and the date shown on each Submittal. Submittals shall be complete in every respect and bound in sets. Each Submittal shall be clearly marked to show each item, component and/or optional feature proposed to be incorporated into the Project. The Plans or Specifications shall be cross referenced as needed to identify the use for which the item or component is intended.
- (f) The Contractor shall check the Submittals for compliance with the requirements of the Contract Documents. The Contractor shall clearly note in writing any and all items which deviate from the requirements of the Contract Documents. Reasons for deviation shall be included with the Submittal. The Contractor shall be solely responsible for checking all dimensions and coordinating all materials and trades to ensure that the components or products proposed, individually or in combination, will fit in the space available and that they will be compatible with other components or products provided.

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- (g) After checking each submittal, the Contractor shall stamp each sheet of the Submittal with the Contractor's review stamp. Data submitted in a bound volume or on one sheet printed on two sides, may be stamped on the front of the first sheet only. The Contractor's review stamp shall be worded as follows:

The equipment and material shown and marked in this Submittal is that proposed to be incorporated into this Project, is in compliance with the Contract Drawings and Specifications unless otherwise shown in bold face type or lettering and listed on a page or pages headed "DEPARTURES FROM DRAWINGS AND SPECIFICATIONS", and can be installed in the allocated spaces.

Reviewed by _____ Date _____

The person signing the review stamp shall be the person designated in writing by the Contractor as having that authority. (A copy of such designation shall be forwarded to the A/E prior to or with the first Submittal.) The signature on the stamped review statement shall be handwritten in ink, or in the case of electronic submittals, electronically signed in accordance with § 59.1-479 et seq. of the Code of Virginia. Stamped signatures are not acceptable.

- (h) The Contractor shall forward all Submittals sufficiently in advance of construction requirements to allow reasonable time for checking, correcting, resubmitting and rechecking.
- (i) If a Submittal indicates a departure from the Contract requirements, the Architect/Engineer may reject the Submittal or, if he deems it to have merit, may recommend it to the Owner, who shall approve or reject it as the Owner, in its sole discretion, sees fit. The departure from the Contract requirements shall be further authorized by a Change Order, if a reduction or increase in the Contract Price is appropriate.
- (j) The Architect/Engineer is responsible to the Owner, but not to the Contractor, to verify that the Submittals conform to the design concept and functional requirements of the Plans and Specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in Submittals are of the quality specified and will function properly, and that the Submittals comply with the Contract Documents.
- (k) The Work shall be in accordance with approved Submittals. Approval of the Contractor's Submittals by the A/E does not relieve the Contractor from responsibility of complying with the Contract and all drawings and Specifications, except as changed by Change Order.
- (l) The Plans and/or Specifications may indicate that the Architect/Engineer designed or detailed a portion of the Plans around a particular product (most commonly a piece of equipment). Should a different product be proposed by the Contractor and accepted, all modifications, rerouting, relocations and variations required for proper installation and coordination to comply with the design concept and requirements of the Contract Documents shall be the responsibility of the Contractor and shall be made at no extra cost to the Owner. If the Plans were noted as designed or detailed around a particular product and/or if a product is named when a "brand name or equal" specification has been used, this is not intended to favor or preclude the use of other products pursuant to Section 26 of these Special Conditions. Rather such design merely acknowledges the reality that in many instances the Architect/Engineer must have a basis to design and detail around for dimensions and characteristics of a product or system.
- (m) Additional Submittal requirements are shown in the specifications.

25. FEES, SERVICES AND FACILITIES

- (a) The Contractor shall obtain all permits, except the building permit, and pay for all fees and charges necessary for temporary access and public right-of-way blockage or use, for temporary connections to utilities and for the use of property (other than the Site) for storage of materials and other purposes unless otherwise specifically stated in the Contract Documents.
- (b) Certain projects such as renovations and interior modifications of existing buildings will usually have water and electric service to the building. In those instances, water and electric power, if required for the Work under the Contract, will be furnished by the Owner subject to reasonable use by the Contractor, only to the extent and capacity of present services. The Contractor shall be responsible for providing required connections, temporary wiring, piping, etc. to these services in a safe manner and in accordance with applicable codes. All temporary wire, pipe, etc. shall be removed before the Substantial Completion inspection. Acceptance by the Contractor of the use of Owner's water and electricity constitutes waiver and a release to the Owner of all claims and of all liability to the Contractor for whatever damages which may result from power and water outages or voltage variations.
- (c) The Owner shall pay any connection charges for permanent utility connections directly to the utility Supplier. The Contractor shall coordinate such connections with the utility Supplier.
- (d) It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor, either directly or through its Subcontractors, shall provide and pay for all material, labor, tools, equipment, water, light, power, telephone and other services or facilities of every nature whatsoever necessary to execute completely and deliver the Work within the Contract Time for Completion or before the Contract Completion Date.
- (e) The Contractor shall provide temporary facilities including Contractor's office space, Owner's Project Inspector office space (if required by the Specifications), toilet facilities, and storage space, as required for the operations and the protection of the material and work. Number, sizes and locations shall be subject to approval of the Owner. Sanitary facilities shall be plumbed into an approved waste treatment system or shall be an approved type of chemical toilet and shall be regularly serviced.

26. EQUALS

- (a) **Brand names:** Unless otherwise stated in the Specifications, the name of a certain brand, make or manufacturer denotes the characteristics, quality, workmanship, economy of operation and suitability for the intended purpose of the article desired, but does not restrict the Contractor to the specific brand, make, or manufacturer; it is set forth to convey to the Contractor the general style, type, character and quality of the article specified.
- (b) **Equal materials, equipment or assemblies:** Whenever in the Contract Documents, a particular brand, make of material, device or equipment is shown or specified, such brand, make of material, device or equipment shall be regarded merely as a standard. Any other brand, make or manufacturer of a product, assembly or equipment which in the opinion of the Architect/Engineer is the equal of that specified, considering quality, capabilities, workmanship, configuration, economy of operation, useful life, compatibility with design of the Work, and suitability for the intended purpose, will be accepted unless rejected by the Owner as not being equal.
- (c) **Substitute materials, equipment or assemblies:** The Contractor may propose to substitute a material, product, equipment, or assembly which deviates from the requirements of the Contract Documents but which the Contractor deems will perform the same function and have equal capabilities, service life, economy of operations, and suitability for the intended purpose. The proposal must include any cost differentials proposed. The Owner will have the A/E provide an initial evaluation of such proposed substitutes and provide a recommendation on acceptability and

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indicate the A/E's redesign fee to incorporate the substitution in the design. If the proposed substitute is acceptable to the Owner, a Change Order will be proposed to the Contractor to accept the substitute and to deduct the cost of the A/E redesign fee and the proposed cost savings from the Contract Price. The Owner shall have the right to limit or reject substitutions at its sole discretion.

- (d) The Contractor shall be responsible for making all changes in the Work necessary to adapt and accommodate any equal or substitute product which it uses. The necessary changes shall be made at the Contractor's expense.

27. AVAILABILITY OF MATERIALS

If a brand name, product, or model number included in the Contract Documents is not available on the present market, alternate equal products or model numbers may be proposed by the Contractor through the Architect/Engineer for approval by the Owner.

28. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the Work shall be purchased by the Contractor, or by any Subcontractor or Supplier, subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. The Contractor warrants that it has clear and good title to all materials and supplies which the Contractor uses in the Work or for which the Contractor accepts payment in whole or in part.

29. STANDARDS FOR MATERIALS INSTALLATION & WORKMANSHIP

- (a) Unless otherwise specifically provided in the Contract, all equipment, material, and accessories incorporated in the Work are to be new and in first class condition.
- (b) Unless specifically approved by the Owner or required by the Contract, the Contractor shall not incorporate into the Work any materials containing asbestos or any material known by the industry to be hazardous to the health of building construction workers, maintenance workers, or occupants. If the Contractor becomes aware that a material required by the Contract contains asbestos or other hazardous materials, the Contractor shall notify the Owner and the Architect/Engineer immediately and shall take no further steps to acquire or install any such material without first obtaining Owner approval.
- (c) All workmanship shall be of the highest quality found in the building industry in every respect. All items of Work shall be done by craftsmen or tradesmen skilled in the particular task or activity to which they are assigned. In the acceptance or rejection of Work, no allowance will be made for lack of skill on the part of workers. Poor or inferior workmanship (as determined by the Architect/Engineer, the Owner or other inspecting authorities) shall be removed and replaced at Contractor's expense such that the Work conforms to the highest quality standards of the trades concerned, or otherwise corrected to the satisfaction of the Architect/Engineer, the Owner, or other inspecting authority, as applicable.
- (d) Under the various sections of the Plans or Specifications, where specified items are supplied with the manufacturer's printed instructions, recommendations, or directions for installation, or where such instructions, recommendations, or directions are available, installation of the specified items shall be in strict accordance with the manufacturer's printed instructions unless those instructions contradict the Plans or Specifications, in which case the Architect/Engineer will be notified for an interpretation and decision.
- (e) Under the various sections of the Plans or Specifications, where reference is made to specific codes or standards governing the installation of specified items, installation shall in all cases be in strict accordance with the referenced codes and standards. Where no reference is made to specific codes

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or standards, installation shall conform to the generally recognized applicable standards for first-class installation of the specific item to be installed. Contractors are expected to be proficient and skilled in their respective trades and knowledgeable of the Codes and Standards of the National Fire Protection Association (NFPA), National Electric Code (NEC), Occupational Safety and Health Act (OSHA) and other codes and standards applicable to installations and associated work by their trade.

- (f) Where the manufacturer's printed instructions are not available for installation of specific items, where specific codes or standards are not referenced to govern the installation or specific items, or where there is uncertainty on the part of the Contractor concerning the installation procedures to be followed or the quality of workmanship to be maintained in the installation of specific items, the Contractor shall consult the Architect/Engineer for approval of the installation procedures or the specific standards governing the quality of workmanship the Contractor proposes to follow or maintain during the installation of the items in question.
- (g) During and/or at the completion of installation of any items, the tests designated in the Plans or Specifications necessary to assure proper and satisfactory functioning for its intended purpose shall be performed by the Contractor or by its Subcontractor responsible for the completed installation. All costs for such testing are to be included in the Contract Price. If required by the Contract Documents, the Contractor shall furnish prior to final inspection the manufacturers' certificates evidencing that products meet or exceed applicable performance, warranty and other requirements, and certificates that products have been properly installed and tested.

30. WARRANTY OF MATERIALS AND WORKMANSHIP

- (a) The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with the Contract Documents and shall be performed by persons qualified at their respective trades.
- (b) Work not conforming to these warranties shall be considered defective.
- (c) This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in the Contract or under Virginia law.

31. USE OF SITE AND REMOVAL OF DEBRIS

- (a) The Contractor shall:
 - (1) Perform the Work in such a manner as not to interrupt or interfere with the operation of any existing activity on, or in proximity to, the Site or with the Work of any other separate contractor;
 - (2) Store its apparatus, materials, supplies and equipment in such orderly fashion at the Site as will not unduly interfere with the progress of the Work or the work of any other contractor; and
 - (3) Place upon the Site only such loads as are consistent with the safety of that portion of the Work.
- (b) The Contractor will expressly undertake, either directly or through its Subcontractor(s), to effect all cutting, filling or patching of the Work required to make the same conform to the Plans and Specifications, and, except with the consent of the Architect/Engineer, not to cut or otherwise alter the Work of any other separate contractor. The Contractor shall not damage or endanger any

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portion of the Work or Site, including existing improvements, unless called for by the Contract.

- (c) The Contractor will expressly undertake, either directly or through its Subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials and debris caused by its operations, to the end that at all times the Site shall present a neat, orderly and workmanlike appearance. No refuse, rubbish, scrap material and debris shall be left within the completed Work nor buried on the Site, but shall be removed from the Site and properly disposed of in a licensed landfill or otherwise as required by law.
- (d) The Contractor will expressly undertake, either directly or through its Subcontractor(s), before Final Payment or such prior time as the Owner may require, to remove all surplus material, false Work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from its operations and to put the Site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the Contract; and to clean thoroughly all glass installed under the Contract, including the removal of all paint and mortar splatters and other defacements.

If the Contractor fails to clean up at the time required herein, the Owner may do so and charge the costs incurred thereby to the Contractor in accordance with Section 10 (b) of these Special Conditions.

- (e) The Contractor shall have, on-Site, an employee certified by the Department of Environmental Quality as a responsible land disturber who shall be responsible for the installation, inspection and maintenance of erosion control and stormwater management measures and devices. The Contractor shall prevent Site soil erosion, the runoff of silt and/or debris carrying water from the Site, and the blowing of debris off the Site in accordance with the applicable requirements and standards of the Contract and the Virginia Department of Environmental Quality's Erosion and Sediment Control Regulations and the Virginia Stormwater Management Regulations.

32. TEMPORARY ROADS

Temporary roads, if required, shall be established and maintained until permanent roads are accepted, then removed and the area restored to the conditions required by the Contract Documents. Crushed rock, paving and other road materials from temporary roads shall not be left on the Site unless permission is received from the Owner to bury the same at a location and depth approved by the Owner.

33. SIGNS

The Contractor may, at its option and without cost to the Owner, erect signs acceptable to the Owner on the Site for the purpose of identifying and giving directions to the job. No signs shall be erected without prior approval of the Owner as to design and location.

34. PROTECTION OF PERSONS AND PROPERTY

- (a) The Contractor will expressly undertake both directly and through its Subcontractors, to take every reasonable precaution at all times for the protection of all persons and property which may come on the Site or be affected by the Contractor's Work.
- (b) The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Any violation of these requirements or duties or any potential safety hazard that is brought to the attention of the Contractor by the Architect/Engineer, the Owner, or any other persons shall be immediately abated.
- (c) The provisions of all rules and regulations governing health and safety as adopted by the Safety and

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Health Codes Board of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia, shall apply to all Work.

- (d) The Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss arising in connection with the Contract. The Contractor shall make good any such damage, injury or loss, except as may be directly and solely due to errors in the Contract Documents or caused by agents or employees of the Owner. The Contractor shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection as required by public authority, local conditions, or the Contract.
- (e) In an emergency affecting the health, safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the Architect/Engineer or the Owner, shall act, at its discretion, to prevent such threatened loss or injury. Also, should the Contractor, to prevent threatened loss or injury, be instructed or authorized to act by the Architect/Engineer or the Owner, the Contractor shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by Section 38 of these Special Conditions.
- (f) When necessary for the proper protection of the Work, temporary heating of a type approved by the Architect/Engineer must be provided by the Contractor, at the Contractor's expense, unless otherwise specified.

35. CLIMATIC CONDITIONS

The Contractor shall suspend activity on and protect any portion of the Work that may be subject to damage by climatic conditions.

36. PAYMENTS TO CONTRACTOR

- (a) Unless otherwise provided in the Contract, the Owner will make partial payments to the Contractor on the basis of a duly certified and approved Schedule of Values and certificate for payment form, showing the estimate of the Work performed during the preceding calendar month or work period, as recommended by the Architect/Engineer. When evaluating the Contractor's form, the Architect/Engineer will consider the value of the Work in place, the value of approved and properly stored materials, the status of the Work on the critical path with regard to the Time for Completion, and the estimated value of the Work necessary to meet the Final Completion Date. The Architect/Engineer will schedule a monthly pay meeting to occur no earlier than the 25th day of the month represented by the payment request or not later than the 5th day of the following month. The Contractor shall submit its monthly estimate of Work completed on approved form in accordance with the Contract so that it is received by the Architect/Engineer and the Project Manager at least one work day prior to the date scheduled by the Architect/Engineer for the monthly pay meeting. The Owner will review the estimate with the Architect/Engineer and the Contractor at the monthly pay meeting, which shall be considered the receipt date, and may approve any or all of the estimate of Work for payment. In preparing estimates, the material delivered to the Site and preparatory Work done shall be taken into consideration, if properly documented as required by Section 20 of these Special Conditions, or as may be required by the Architect/Engineer so that quantities may be verified. In addition to material delivered to the Site, material such as large pieces of equipment and items purchased specifically for the Project, but stored off the Site within the Commonwealth of Virginia, may be considered for payment, provided all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested:
 - (1) The Contractor must notify the Owner in writing, at least ten (10) days prior to the submission of the payment request, through the Architect/Engineer, that specific items

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will be stored off Site in a designated, secured place within the Commonwealth of Virginia. The Schedule of Values must be detailed to indicate separately both the value of the material and the labor/installation for trades requesting payment for stored materials. By giving such notification and by requesting payment for material stored off Site, the Contractor will warrant that the storage location is safe and suitable for the type of material stored and that the materials are identified as being the property of the Contractor, and agrees that loss of materials stored off the Site shall not relieve the Contractor of the obligation to timely furnish these types and quantities of materials for the Project and meet the Time for Completion or Contract Completion Date, subject to Section 43 (b) of these Special Conditions. If the storage location is more than 20 miles from the Site, the Contractor may be required to reimburse the Owner for the cost incurred for travel to the storage location to verify the Contractor's request for payment for materials stored off Site. A supplementary agreement shall be required for payment by the Owner to the Contractor for materials or equipment that is stored off Site at a location that is not within the Commonwealth of Virginia.

- (2) Such notification, as well as the payment request, shall:
 - (a) Itemize the quantity of such materials and document with invoices showing the cost of said materials;
 - (b) Indicate the identification markings used on the materials, which shall clearly reference the materials to the particular project;
 - (c) Identify the specific location of the materials, which must be within reasonable proximity to the Site and within the Commonwealth of Virginia;
 - (d) Include a letter from the Contractor's surety which confirms that the surety on the performance bond and the labor and material payment bond has been notified of the request for payment of materials stored off the Site and agrees that the materials are covered by the bonds; and
 - (e) Include a certificate of all-risk builder's risk insurance in an amount not less than the fair market value of the materials, which shall name the Owner and the Contractor as co-insureds.
 - (3) The Architect/Engineer shall indicate, in writing, to the Owner that Submittals for such materials have been reviewed and meet the requirements of the Contract Documents, that the stored materials meet the requirement of the Plans and Specifications, and that such materials conform to the approved Submittals. Should the A/E deem it necessary to visit the storage site to make such review, the Contractor shall bear the costs incurred therewith.
 - (4) The Owner, through the Architect/Engineer, shall notify the Contractor in writing of its agreement to prepayment for such materials.
 - (5) The Contractor shall notify the Owner in writing, through the Architect/Engineer, when the materials are to be transferred to the Site and when the materials are received at the Site.
- (b) Payment will not be made for materials or equipment stored on or off the Site which are not scheduled for incorporation into the Work within the six months next following submission of the request for payment, unless the Contractor has the prior consent of the Owner, which consent may be granted or withheld by the Owner in its discretion if, in the opinion of the Owner, it is not necessary to procure the materials more than six months in advance of use to assure their

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availability when needed.

- (c) No payment shall be made to the Contractor until:
 - (1) The Contractor furnishes to the Owner its Social Security Number (SSN) if an individual, or its Federal Employer Identification Number (FEIN) if a proprietorship, partnership, corporation or other legal entity.
 - (2) Certificates of insurance or other satisfactory evidence of compliance by the Contractor with all the requirements of the General and Special Conditions have been delivered to the Owner.
 - (3) Copies of any certificates of insurance required of a Subcontractor have been delivered to the Owner for payments based on Work performed by a Subcontractor.
 - (4) The Contractor has (i) submitted a preliminary schedule which is acceptable to the Owner in accordance with Section 19(a), (ii) submitted a fully complete Project schedule accepted by the Owner in accordance with Section 19(a), (iii) maintained the monthly bar graphs or status reports required by Section 19(d), or (iv) provided a recovery schedule pursuant to Section 19(e), as each of them may be required.
- (d) In making such partial payments, five percent (5%) of each payment to the Contractor shall be retained until the Final Completion Date and acceptance of all Work, unless otherwise provided by any law, regulation or program of the federal government. Such retainage shall be held to assure faithful performance of the Contract and may also be used as a fund to deduct amounts due to or claimed by the Owner, including, but not limited to, payment to the Owner of all moneys due for deductive Change Orders, credits, uncorrected Defective Work, interest, damages, and the like. The Owner may, at its sole discretion, agree on an item by item basis to release the retainage on items which are 100% complete and which have been accepted by the Owner as being tested and complete and on which no further action or work will be required. Retainage which is released by the Owner shall be distributed by the Contractor in conformance with Section 37 of these Special Conditions.
- (e) All material and Work for which partial payments are made shall thereupon become the sole property of the Owner, but this provision shall not relieve the Contractor from the sole responsibility for all materials and Work, including those for which payment has been made, or for the restoration of any damaged materials or Work. Nor shall this provision serve as a waiver of the right of the Owner to require the fulfillment of all of the terms and conditions of the Contract.
- (f) The Final Payment, which shall include the retainage, less any amounts due to or claimed by the Owner, shall not become due until the Architect/Engineer and the Owner agree that the Final Completion Date has been achieved and until the Contractor shall deliver to the Owner through the Architect/Engineer a certificate of completion by the Contractor and an affidavit of payment of claims, stating that all Subcontractors and Suppliers of either labor or materials have been paid all sums claimed by them for Work performed or materials furnished in connection with the Project less retainage. Amounts due the Owner which may be withheld from the Final Payment may include, but are not limited to, amounts due pursuant to Section 16(a)-(d), Section 31(d), costs incurred to repair or replace Defective Work, costs incurred as a result of the Contractor's negligent acts or omissions or omissions of those for whom the Contractor is responsible, delay damages under Section 43(h), and any liquidated or actual damages. If all Subcontractors and Suppliers of labor and materials have not been paid the full amount claimed by them, the Contractor shall list each to which an agreed amount of money is due or which has a claim in dispute. With respect to all such Subcontractors and Suppliers, the Contractor shall provide to the Owner, along with the affidavit of payment of claims, an affidavit from each such Subcontractor and Supplier stating the amount of their subcontract or supply contract, the percentage of completion, the amounts paid to

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them by the Contractor and the dates of payment, the amount of money still due if any, any interest due the Subcontractor or Supplier pursuant to Section 37(b) below, and whether satisfactory arrangements have been made for the payment of said amounts. If no agreement can be reached between the Contractor and one or more Subcontractors or Suppliers as to the amounts owed to the Subcontractors or Suppliers, the Owner may, in its discretion, pay such portion of the moneys due to the Contractor which is claimed by the Subcontractor or Supplier into a Virginia court or federal court sitting in Virginia, in the manner provided by law. Said payment into court shall be deemed a payment to the Contractor. Nothing in this Section shall be construed as creating any obligation or contractual relationship between the Owner and any Subcontractor or Supplier, and the Owner shall not be liable to any Subcontractor or Supplier on account of any failure or delay of the Owner in complying with the terms hereof.

- (g) Upon successful completion of the final inspection and all Work required by the Contract, including but not limited to the delivery of as-built drawings, equipment manuals, written warranties, acceptance of the Work by the Owner and the delivery of the affidavits required in Section 36(f) of these Special Conditions, the Architect/Engineer shall deliver the written certificate of completion by the Architect/Engineer to the Owner, with a copy to the Contractor, stating the entire amount of Work performed and compensation earned by the Contractor, including extra work and compensation therefor. The Owner may accept the Work for occupancy or use while asserting claims against the Contractor; disputing the amount of compensation due to the Contractor; disputing the quality of the Work, its completion, or its compliance with the Contract Documents; or any other reason.
- (h) Unless there is a dispute about the compensation due to the Contractor, Defective Work, quality of the Work, compliance with the Contract Documents, completion itself, claims by the Owner or other matters in contention between the parties, within thirty (30) days after receipt and acceptance of the Schedule of Values and certificate for payment in proper form by the Architect/Engineer at the monthly pay meeting, which shall be considered the receipt date, the Owner shall pay to the Contractor the amount approved by the Architect/Engineer, less all prior payments and advances whatsoever to or for the account of the Contractor. In the case of Final Payment, the completed affidavit of payment of claims, the certificate of completion by the Contractor and the certificate of completion by the Architect/Engineer shall accompany the final Schedule of Values and certificate for payment which is forwarded to the Owner for payment. The date on which payment is due shall be referred to as the Payment Date. In the event of disputes, payment shall be mailed on or before the Payment Date for amounts and Work not in dispute, subject to any set offs claimed by the Owner; provided, however in instances where further appropriations are required by the City of Hopewell, City Council or where the issuance of further bonds is required, in which case, payment shall be made within thirty (30) days after the effective date of such appropriation or within thirty (30) days after the receipt of bond proceeds by the Owner. All prior estimates and payments including those relating to extra Work may be corrected and adjusted in any payment and shall be corrected and adjusted in the Final Payment. In the event that any request for payment by the Contractor contains a defect or impropriety, the Owner shall notify the Contractor of any defect or impropriety which would prevent payment by the Payment Date, within five (5) days after receipt of the Schedule of Values and certificate for payment by the Owner from the Architect/Engineer.
- (i) Interest shall accrue on all amounts owed by the Owner to the Contractor which remain unpaid seven (7) days following the Payment Date. Said interest shall accrue at the legal rate of interest under Virginia Code § 6.2-301. No interest shall accrue on retainage or when payment is delayed because of disagreement between the Owner and the Contractor regarding the quantity, quality or timeliness of the Work, including, but not limited to, compliance with Contract Documents or the accuracy of any request for payment received. This exception to the accrual of interest stated in the preceding sentence shall apply only to that portion of a delayed payment which is actually the subject of such a disagreement and shall apply only for the duration of such disagreement. Nothing contained herein shall be interpreted, however, to prevent the withholding of retainage to assure faithful performance of the Contract. These same provisions relating to payment of interest to the

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Contractor shall apply also to the computation and accrual of interest on any amounts due from the Contractor to the Owner for deductive Change Orders and to amounts due on any claims by the Owner. The date of mailing of any payment by the U.S. Mail is deemed to be the date of payment to the addressee.

- (j) The acceptance by the Contractor of the Final Payment shall be and operate as a release to the Owner of all claims by the Contractor, its Subcontractors and Suppliers, and of all liability to the Contractor whatever, including liability for all things done or furnished in connection with the Work, except for things done or furnished which are the subject of unresolved claims for which the Contractor has filed a timely written notice of intent, provided a claim is submitted no later than sixty (60) days after Final Payment. Acceptance of any interest payment by the Contractor shall be a release of the Owner from claims by the Contractor for late payment.
- (k) No certificate for payment issued by the Architect/Engineer, and no payment, final or otherwise, no certificate of completion, nor partial or entire use or occupancy of the Work by the Owner, shall be an acceptance of any Work or materials not in accordance with the Contract, nor shall the same relieve the Contractor of responsibility for faulty materials or Defective Work or operate to release the Contractor or its Surety from any obligation under the Contract, the performance bond and the labor and material payment bond.

37. PAYMENTS BY CONTRACTOR

The Contractor is obligated to:

- (a) Within seven (7) days after receipt of amounts paid to the Contractor by the Owner for Work performed by the Subcontractor or Supplier under the Contract,
 - (1) Pay the Subcontractor or Supplier for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor or the materials furnished by the Supplier under the Contract; or
 - (2) Notify the Subcontractor or Supplier, in writing, of the Contractor's intention to withhold all or a part of the Subcontractor or Supplier's payment with the reason for nonpayment;
- (b) Pay interest to the Subcontractor or Supplier on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Owner for Work performed by the Subcontractor or materials furnished by the Supplier under the contract, except for amounts withheld as allowed under Subsection (a) (2) of this Section.
- (c) Include in each of its subcontracts a provision requiring each Subcontractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower tier subcontractor. Each Subcontractor shall include with its invoice to, or request for payment from, the Contractor, a certification that that Subcontractor has paid each of its suppliers and lower tier subcontractors their proportionate share of previous payments received from the Contractor attributable to the Work performed or the materials furnished by it under the Contract. The date of mailing of any payment is deemed to be payment by U.S. Mail is deemed to be payment to the addressee.

The Contractor's obligation to pay interest to the Subcontractor or Supplier pursuant to Subsection (b) of this Section is not an obligation of the Owner. A modification to the Contract shall not be made for the purpose of providing reimbursement for such interest charge. A Contractor's cost reimbursement claim shall not include any amount for reimbursement of such interest charge.

38. CHANGES IN THE WORK

- (a) The Owner may at any time, by written order utilizing the required Change Order form and without notice to the sureties, make changes in the Work which are within the general scope of the Contract, except that no change will be made which will increase the total Contract Price to an amount more than twenty percent (20%) in excess of the original Contract Price without notice to sureties. At the time of the Preconstruction meeting described in Section 50(b), the Contractor and the Owner shall advise each other in writing of their designees authorized to accept and/or approve changes to the Contract Price and of any limits to each designee's authority. Should any designee or limits of authority change during the time the contract is in effect, the Contractor or Owner with such a change shall give written notice to the other within seven (7) calendar days, utilizing the procedures set forth in these Special Conditions. The Contractor agrees and understands that the authority of the Owner's designee is limited by Virginia Code § 2.2-4309 and any other applicable statute.

In making any change, the charge or credit for the change shall be determined by one of the following methods as selected by the Owner:

- (1) **Fixed Price:** By a mutually agreed fixed amount change to the Contract Price and/or time allowed for completion of the Work. The Change Order shall be substantiated by documentation itemizing the estimated quantities and costs of all labor, materials, and equipment required as well as any mark-up used. The price change shall include the Contractor's reasonable overhead and profit, including overhead for any unreasonable delay arising from or related to the Change Order and/or the change in the Work. See Subsections (d), (e) and (f), below.
- (2) **Unit Price:** By using unit prices and calculating the number of net units of Work in each part of the Work which is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract or multiplying by a mutually agreed unit price if none was provided in the Contract. No additional percentage markup for overhead or profit shall be added to the unit prices.
- (3) **Cost Reimbursement:** By ordering the Contractor to perform the changed Work on a cost reimbursement basis by issuing two Change Orders citing this Subsection, an initiating Change Order, authorizing the changed Work, and a confirming Change Order approving the additional cost and time for the changed Work. The initiating Change Order shall:
 - (i) Describe the scope or parameters of the change in the Work;
 - (ii) Describe the cost items to be itemized and verified for payment and the method of measuring the quantity of work performed;
 - (iii) Address the impact on the schedule for Substantial Completion;
 - (iv) Order the Contractor to proceed with the change to the Work;
 - (v) Order the Contractor to keep in a form acceptable to the Owner, an accurate, itemized account of the actual cost of the change in the Work, including, but not limited to, the actual costs of labor, materials, equipment, and supplies;
 - (vi) Order the Contractor to annotate a copy of the Project schedule to accurately show the status of the Work at the time this first Change Order is issued, to show the start and finish dates of the changed Work, and the status of the Work when the changed Work is completed; and

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- (vii) State that a confirming Change Order will be issued to incorporate the cost of the ordered ~~changed~~ in the Work into the Contract Price and any change in the Time for Completion or Final Completion Date.

The Contractor shall sign the initiating Change Order acknowledging the Contractor has been ordered to proceed with the change in the Work. The Contractor's signature on each initiating Change Order citing this Subsection 38(a) (3) as the method for determining the cost of the Work shall not constitute the Contractor's agreement on the cost or time impact of the ordered Work.

Except as otherwise may be agreed to in writing by the Owner, such costs shall not exceed those prevailing for the trades or crafts (based upon rates established by the US Department of Labor, Bureau of Labor Statistics, or other generally recognized cost data publication), materials, and equipment in the locality of the Project, may include only those items listed as allowable in Subsection 38(e), and shall not include any of the costs listed as not allowable in Subsection 38(f). The Owner shall be permitted, on a daily basis, to verify such records and may require such additional records as are necessary to determine the cost of the change to the Work.

Within fourteen (14) days after the conclusion of such ordered Work, the Contractor and the Owner shall reach agreement on (i) a cost for the ordered Work, based on the records kept and the Contractor's allowance for overhead and profit determined in accordance with the provisions set forth in Subsections 38(d), (e), and (f) below; and (ii) the change in the Time for Completion or Final Completion Date, if necessary, as a result of the ordered Work. Such costs and time shall be incorporated into a confirming Change Order which references the initiating Change Order. If agreement on the cost and time of the changed Work cannot be reached within the fourteen (14) days allotted, the Contractor may submit a claim for the disputed cost or time as provided for in Section 47 .

- (4) By issuing a unilateral change order in the amount deemed appropriate by the Owner for the Work. If the Contractor objects to the amount or scope of the Change Order then the Contractor may within the 14 days of the date of the Change Order file a claim for the disputed amount as provided for in Section 47.
- (b) The Contractor shall review any Owner requested or directed change and shall respond in writing within fourteen (14) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon the Work, including any increase or decrease in the Contract time and price. The Contractor shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the proposed change in Contract Price.

The Owner shall review the Contractor's proposal and respond to the Contractor within thirty (30) days of receipt. If a change to the Contract Price and Time for Completion or Contract Completion Date are agreed upon, both parties shall sign the Change Order. If the Contract Price and Time for Completion or Contract Completion Date are not agreed upon, the Owner may direct the Contractor to proceed under Subsection 38(a)(3), above. Change Orders shall be effective when signed by both parties.

- (c) In figuring changes, any instructions for measurement of quantities set forth in the Contract shall be followed.
- (d) Overhead and profit for both additive and deductive changes in the Work (other than changes covered by unit prices) shall be paid by applying the specified percentage markups only on the net cost of the changed Work (i.e. difference in cost between original and changed Work excluding

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overhead and profit). Said percentages for overhead and profit shall reasonably approximate the Contractor's overhead and profit, but shall not exceed the percentages for each category listed below:

- (1) If a Subcontractor does all or part of the changed Work, the Subcontractor's mark-up for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%). The Contractor's mark-up for overhead and profit on the Subcontractor's price shall be a maximum of ten percent (10%).
 - (2) If the Contractor does all or part of the changed Work, its markup for overhead and profit on the changed Work it performs shall be a maximum of fifteen percent (15%).
 - (3) If a Sub-subcontractor at any tier does all or part of the changed Work, the Sub-subcontractor's markup on that Work shall be a maximum of fifteen percent (15%). The markup for overhead and profit on a sub-subcontractor's Work by the Contractor and all intervening tiers of Subcontractors shall not exceed a total of ten percent (10%).
 - (4) Where Work is deleted from the Contract prior to commencement of that Work without substitution of other similar Work, one hundred percent (100%) of the Contract Price attributable to that Work shall be deducted from the Contract Price. However, in the event that material Submittals have been approved and orders placed for said materials, a lesser amount, but in no case less than eighty percent (80%) of the Contract Price attributable to that Work, shall be deducted from the Contract Price. The credit to the Owner for reduced premiums on labor and material bonds and performance bonds shall in all cases be one hundred percent (100%).
- (e) Allowable costs for changes in the Work may include but are not limited to the following:
- (1) Labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such premiums are explicitly authorized by the Owner.
 - (2) Materials incorporated into the change to the Work, including costs of transportation and storage, if applicable. If applicable, all cash discounts shall accrue to the Contractor, unless the Owner deposits funds with the Contractor to make such payments, and all trade discounts, rebates, refunds, and returns from the sale of surplus materials shall accrue to the Owner.
 - (3) Equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If rented expressly for accomplishing the change in the Work, the cost shall be the rental rate according to the terms of the rental agreement, which the Owner shall have the right to approve. If owned by the Contractor, the costs shall be a reasonable price based upon the life expectancy of the equipment and the purchase price of the equipment. If applicable, transportation costs may be included.
 - (4) Costs of increases in premiums for the standard labor and material payment bond and the Standard Performance Bond, provided coverage for the cost of the change in the Work results in such increased costs. At the Owner's request, the Contractor shall provide proof of its notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premium shall be an allowable cost but shall not be marked up.
 - (5) Contractor and Subcontractor overhead costs as set forth in Subsection (d) markups above.
 - (6) **Agreed Compensation for Overhead for Changes to Time for Completion or**

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Contract Completion Date for Changes to the Work: If the change in the Work also changes the Time for Completion or the Contract Completion Date by adding days to complete the Work, an itemized accounting of the following direct Site overhead and home office overhead and other indirect overhead expenses set forth in subparagraphs (i) and (ii) below may be considered as allowable costs for compensation in addition to those shown above:

(i) **Direct Site Overhead Expenses:**

The Contractor's per diem expenses, as shown by the itemized accounting, for the following allowable direct Site overhead expenses: The Site superintendent's pro-rata salary, temporary Site office trailer, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary / toilet facilities for each day added. All other direct expenses are covered by and included in the Subsection 38(d) markups above.

(ii) **Home Office and Other Indirect Overhead Expenses:**

A five percent (5%) markup on the above direct Site overhead expenses will be allowed as compensation for the Contractor's home office overhead and all other direct or indirect overhead expenses for days added to the Time for Completion or the Contract Completion Date for a change in the Work. All other overhead and other direct or indirect overhead expenses are covered by and included in this markup and the Subsection (d) markups above.

(7) Any other costs directly attributable to the change in the Work with the exception of those set forth in Subsection 38(f) below.

(f) Allowable costs for changes in the Work shall not include the following:

(1) Costs due to the negligence of the Contractor, any Subcontractor, Supplier, their employees, or other persons for whom the Contractor is responsible, including, but not limited to, costs for the correction of Defective Work, for improper disposal of material, for equipment wrongly supplied, for delay in performing the Work, or for delay in obtaining materials or equipment.

(2) Home office expenses including payroll costs for the Contractor's officers, executives, administrators, accountants, counsel, timekeepers, clerks, and other similar administrative personnel employed by the Contractor, whether at the Site or in the Contractor's principal or branch office for general administration of the Work. These costs are deemed overhead included in the percentage markups allowable in Subsections 38(d) above.

(3) Home and field office expenses not itemized in Subsection 38(e) (6) above. Such items include, but are not limited to, expenses of Contractor's home and branch offices, Contractor's capital expenses, interest on Contractor's capital used for the Work, charges for delinquent payments, small tools, incidental job costs, rent, utilities, telephone and office equipment, and other general overhead expenses.

(4) Other items reasonably determined by the Owner to not be allowed.

(g) All Change Orders, except the "initial" Change Orders authorizing work citing Subsection 38(a)(3) procedures, must state that the Time for Completion or Contract Completion Date is not changed or is either increased or decreased by a specific number of days. The old Time for Completion and, if changed, the new Time for Completion must be stated.

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If the Contractor requests an extension to the Time for Completion or a later Contract Completion Date, he must provide written justification for the extension to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. When a CPM schedule is required by the Contract, no extension to the Time for Completion or Contract Completion Date shall be allowed unless, and then only to the extent that, the additional or changed Work increases the length of the critical path beyond the Time for Completion or Contract Completion Date. If approved, the increase in time required to complete the Work shall be added to the Time for Completion or Contract Completion Date.

The Owner may decrease, by Change Order, the Time for Completion or Contract Completion Date when an Owner-requested deletion from the Work results in a decrease in the actual time required to complete the Work as demonstrable on the Bar Graph Schedule or on the CPM Schedule, whichever is appropriate. The Contractor may submit a request to decrease, by Change Order, the Time for Completion or Contract Completion Date under the procedures and subject to the considerations set forth in Section 19(f). No request for such decrease shall be considered for approval unless the proposed shorter schedule is otherwise acceptable under Sections 19(b) or (c), whichever is applicable. The Change Order decreasing the Time for Completion or changing the Contract Completion Date must be signed by both the Owner and the Contractor.

With the exception of Change Orders under Subsection 38(a) (3), which shall arrive at a change to the Contract Price and any change to time using the procedures set forth therein, each Change Order shall include all time and monetary impacts of the change, whether the Change Order is considered alone or with all other changes during the course of the Project. Failure to include a change to time and changes in the Contract Price attributable to the change in time under Subsections 38(a)(1) or (2) shall waive any change to the time and Contract Price unless the parties mutually agree in writing to postpone a determination of the time related impacts of the change. Such a determination may be postponed not more than forty-five (45) days to give the Contractor an opportunity to demonstrate a change in the time and price needed to complete the Work. During any such postponement, the Work shall proceed, unless the Owner agrees otherwise.

If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Contract Price, or due to the Contractor's refusal to proceed with any of the Work, pending agreement on a change in time or price, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Contract Completion Date or for an increase in the Contract Price.

- (h) The acceptance by the Contractor of any payment made by the Owner under a Change Order shall be and operate as a release to the Owner of all claims by the Contractor and of all liability owing to the Contractor for all things done or furnished in connection with the Work described in the Change Order. The execution of any Change Order by the Owner shall not be an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve the Contractor of responsibility for faulty materials or workmanship or operate to release the Contractor or its surety from any obligation arising under the Contract, the standard performance bond, or the standard labor and material payment bond.
- (i) Payments will not be made for any Work, labor, or materials performed on a unit price or a Subsection 38(a)(3) basis until the Contractor has furnished the Owner documents, certified as true and correct by an authorized officer or agent of the Contractor, evidencing the cost of such Work, labor, and materials. The Owner may require any or all of the following documentation to be provided by the Contractor.

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For Work performed on a Unit Price basis:

- (1) Certified measurements of authorized and approved excavations, over-excavations, fills and/or backfills, and similar work; and/or
- (2) Certified measurements of piling installed, caissons installed, and similar work; and/or
- (3) Daily records of waste materials removed from the Site and/or fill materials imported to the Site.

For Work performed on a Subsection 38(a)(3) basis:

- (1) Certified payroll records showing the name, classification, date, daily hours, total hours, rate, and extension for each laborer, foreman, supervisor, or other worker; and/or
- (2) Equipment type & model, dates, daily hours, total hours, rental rate, or other specified rate, and extension for each unit of equipment;
- (3) Invoices for materials showing quantities, prices, and extensions;
- (4) Daily records of waste materials removed from the Site and/or fill materials imported to the Site;
- (5) Certified measurements of over-excavations, piling installed and similar work; and/or
- (6) Transportation records for materials, including prices, loads and extensions.

Requests for payment shall be accompanied and supported by invoices for all materials used and for all transportation charges claimed. If materials come from the Contractor's own stock, then an affidavit may be furnished, in lieu of invoices, certifying quantities, prices, etc. to support the actual cost.

39. EXTRAS

If the Contractor claims that any instructions given to him by the Architect/Engineer or by the Owner, by drawings or otherwise, involve extra Work which increases the scope of the Contract, then, except in emergencies endangering life or property, the Contractor shall give the Architect/Engineer and the Owner written notice thereof before proceeding to execute the extra Work. Said notice shall be given promptly enough to avoid delaying the extra Work and in no instance later than fourteen (14) days after the receipt of such instructions. Should it not be immediately clear to the Contractor that the change involves extra Work outside the scope of the Contract, written notice shall be sufficient if given as soon as possible after such realization, but in no event later than fourteen (14) days after the start of such extra Work. If the Owner agrees, a Change Order shall be issued as provided in Section 38 of these Special Conditions, and any additional compensation shall be determined by one of the three (3) methods provided in Subsection 38(a), as selected by the Owner. If the Owner does not agree, then any claims for compensation for the extra Work shall be filed in accordance with Section 47.

40. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

If the Work should be stopped under an order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or anyone employed by him, or if the Owner should fail to pay to the Contractor within thirty (30) days any sum certified by the Architect/Engineer when no dispute exists as to the sum due or any provision of the Contract, then the Contractor may, upon ten (10) calendar days written notice to the Owner and the Architect/Engineer, stop Work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit on the Work performed shall be recovered only to the extent that the Contractor can

demonstrate that he would have had profit on the entire Contract if he had completed the Work. The Contractor may not receive profit or any other type of compensation for parts of the Work not performed. The Contractor may recover the reasonable cost of physically closing down the Site, but no other costs of termination. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall termination of the Contract by the Contractor terminate the obligations of the Contractor's surety on its payment and performance bonds.

41. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE

- (a) If the Contractor should be adjudged as bankrupt, or if the Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, the Owner may terminate the Contract. If the Contractor should refuse or should repeatedly fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials and equipment, or if the Contractor should fail to perform the Work in a diligent, efficient, workmanlike, skillful, and careful manner, or if he should fail or refuse to perform the Work in accordance with the Contract Documents, or if the Contractor should fail to make prompt payment to Subcontractors or Suppliers of material or labor, or if the Contractor should disregard laws, ordinances or the written instructions of the Architect/Engineer or the Owner, or otherwise be in substantial violation of any provision of the Contract, then the Owner may terminate the Contract.
- (b) Prior to termination of the Contract, the Owner shall give the Contractor and its surety ten (10) days written notice of such termination in the manner provided in Section 1 (definition of "Notice") of these Special Conditions and allow ten (10) days during which the Contractor and/or its surety may rectify the basis for the notice. If rectified to the satisfaction of the Owner within said ten (10) days, the Owner may rescind its notice of termination. If not, the termination for cause shall become effective at the end of the ten (10) day notice period without further notice to the Contractor. In the alternative, the Owner may, in writing, postpone the effective date of the termination for cause, at the Owner's sole discretion, if the Owner should receive reassurances from the Contractor and/or its surety that the basis for the termination will be remedied in a time and manner which the Owner finds acceptable. If at any time after such postponement, the Owner determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause, without the necessity of further ten (10) day notice, by notifying the Contractor and its surety in writing of the termination. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.
- (c) Upon termination of the Contract becoming effective, the Owner shall take possession of the Site and of all materials, tools and equipment thereon and shall proceed as follows:
 - (1) **No Security Provided:** If no security has been provided pursuant to Section 8 herein, the Owner shall finish the Work by whatever method the Owner may deem expedient. If the expense of finishing the Work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the Contract Price, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.
 - (2) **Security Provided:** If security has been provided pursuant to Section 8 herein, the Owner shall provide Notice to the Surety that termination of the Contract became effective and proceed as set forth in the standard performance bond and the terms and conditions therein. If the expense of finishing the Work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the Contract Price and the penal amount of the standard performance bond, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.

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- (d) If it should be judicially determined that the Owner improperly terminated the Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner and the Contractor's rights and remedies shall be solely limited to those provided by Section 42 of these Special Conditions.
- (e) Termination of the Contract under this Section is in addition to and without prejudice to any other right or remedy of the Owner. Any actions by the Owner permitted herein shall not be deemed a waiver of any other right or remedy of the Owner under the Contract or under the law. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. The provisions of this Section shall survive termination of the Contract.

42. TERMINATION BY OWNER FOR CONVENIENCE

- (a) The Owner may terminate the contract, in whole or in part, at any time without cause upon giving the Contractor written notice of such termination in the manner provided in Section 1 (definition of "Notice") of these Special Conditions. Upon such termination, the Contractor shall immediately cease Work and remove from the Site all of its labor forces, equipment and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:
 - (1) Amounts due for Work performed in accordance with the Contract subsequent to the latest approved Schedule of Values and certificate for payment through the date of termination; and
 - (2) All amounts then otherwise due under the terms of the Contract associated with the Work performed prior to the date of termination; and
 - (3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination.

The Contractor shall not be entitled to any compensation or damages for lost profits or for any other type of contractual compensation or damages other than those provided in Subsection 42(a). The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. Upon payment of the foregoing, Owner shall have no further obligations to Contractor of any nature. The Contractor agrees to waive all claims against the Owner for any consequential damages that may arise from or relate to the Owner's termination of the Contract including, but not limited to, damages for loss of revenue, income, profit, business, reputation, or bonding capacity.

- (b) In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds.
- (c) Any actions by the Owner permitted herein shall not be deemed a waiver of any other right or remedy of the Owner under the Contract or under the law. The provisions of this Section shall survive termination of the Contract.

43. DAMAGES FOR DELAYS; EXTENSION OF TIME

- (a) **Excusable Non-Compensable Delays:** If and to the extent that the Contractor is delayed at any time in the progress of the Work by strikes, fires, unusual delays in transportation or unavoidable casualties, or other causes outside the control of the Owner or the Contractor, with the exception of delays caused by weather provided for in Section 6, for which the Contractor intends to request an extension of either the Time for Completion or the Contract Completion Date, as the

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case may be, then the Contractor shall give the Owner and Architect/Engineer written notice of the delay within fourteen (14) days of the inception of the delay. The Contractor shall also give written notice to the Owner and Architect/Engineer of the termination of the delay not more than fourteen (14) days after such termination. If the Owner agrees with the existence and the impact of the delay, the Owner shall extend the Time for Completion, the Contract Completion Date or Final Completion Date, as the case may be, for the length of time that the date for Substantial Completion or the Final Completion Date was actually delayed thereby, and the Contractor shall not be charged with liquidated or actual damages for delay during the period of such extension nor shall the Contractor be due compensation or damages of any kind, under any theory of law, as a result of such delay, the impact of such delay, or acceleration of Work as a result of such delay. In the event a CPM schedule is required by the Contract, no extension of the Time for Completion or Contract Completion Date shall be granted unless the Contractor demonstrates a delay in the critical path of the approved CPM schedule or approved bar graph schedule.

- (b) **Excusable Compensable Delays:** If and to the extent that the Contractor is unreasonably delayed at any time in the progress of the Work by any acts or omissions of the Owner, its agents, or employees due to causes within the Owner's control, and the Contractor intends to request an extension of either the Time for Completion or the Contract Completion Date, as the case may be, and/or additional compensation for damages, if any, caused by the delay, then the Contractor shall notify the Owner and the Architect/Engineer immediately at the time of the occurrence giving rise to the delay by the fastest means available and shall give written notice no later than two (2) working days after inception of the delay. The Contractor's written notice shall specify the nature of the delay claimed by the Contractor, the cause of the delay, and the impact of the delay on the Contractor's Work schedule. The Owner shall then have three (3) working days to respond to the Contractor's notice with a resolution, remedy, direction to alleviate the delay, or rejection of the Contractor's notice of delay. The Owner's failure to respond within the time required shall be deemed to be a rejection of the Contractor's notice. The Contractor shall also give written notice to the Owner and Architect/Engineer of the termination of the delay not more than fourteen (14) days after such termination. If and to the extent that a delay is caused by or due to the Owner or A/E taking any actions permitted or required by the Contract, the Contractor shall be entitled to an extension of time or additional compensation only for the portion of the delay that is unreasonable, if any.
- (c) **Non-Excusable Non-Compensable Delays:** The Contractor shall not be entitled to an extension of the Time for Completion or Contract Completion Date or to any additional compensation for delays if and to the extent they are (1) caused by acts, omissions, fault, or negligence of the Contractor or its Subcontractors, agents or employees or due to foreseeable causes within their control, including, but not limited to, delays resulting from Defective Work including workmanship and/or materials, from rejected work which must be corrected before dependent work can proceed, from Defective Work or rejected work for which corrective action must be determined before like work can proceed, from incomplete, incorrect, or unacceptable Submittals or samples, or from the failure to furnish enough properly skilled workers, proper materials or necessary equipment to diligently perform the work in a timely manner in accordance with the Project schedule; or (2) due to causes that would entitle the Owner to recover delay costs or damages.
- (d) No extension of time or additional compensation, if applicable, will be granted for any delay unless the claimed delay directly affects the critical path of the approved CPM schedule or the schedule shown on the approved bar graph schedule, whichever is applicable, and any Float has been consumed. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed in Subsections 43(a) or (b) above, whichever applies. Furthermore, no extension of time or additional compensation shall be given for any delay unless a written request therefor is made in writing to the Owner, with a copy to the Architect/Engineer, within twenty (20) days of the end of the delay. The request shall state the cause of the delay, the number of days of extension requested, and any additional compensation requested by the Contractor. Failure to give written notice of either the inception or

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the termination of the cause of delay or failure to present a claim for extension of time and/or monetary compensation within the times prescribed shall constitute a waiver of any claim for extension or additional compensation based upon that cause.

- (e) Requests for extensions of time and/or compensation for delays pursuant to Subsection 43(b) above must be substantiated by itemized data and records clearly showing that the Work delayed was on the critical path of the approved CPM schedule or on the sequence of Work on the approved bar graph schedule, as modified, whichever applies, and that the additional time and/or costs incurred by the Contractor are directly attributable to the delay in the Work claimed. Furthermore, compensation for delay shall be calculated from the contractual Time for Completion or Contract Completion Date, as adjusted by Change Order, and shall not be calculated based on any early completion planned or scheduled by the Contractor, unless a Change Order has been executed pursuant to Section 19(f) changing the Time for Completion or the Contract Completion Date to reflect such early completion. See Section 19 for procedures for the Contractor to follow if it plans early completion of the Work and wishes to request a Change Order reflecting the early completion date.
- (f) **Agreed Compensation/Liquidated Damages for Owner Delay:**

If and to the extent that the Contractor is entitled to an extension in the Time for Completion or the Contract Completion Date and additional compensation purely as a result of delay under Subsection 43(b) and not as a result of a change in the Work under Section 38, the agreed compensation and liquidated damages due the Contractor for days added to the Time for Completion or the Contract Completion Date for each day of such delay shall be the per diem expenses as determined from an itemized accounting of the direct Site overhead expenses and home office and other indirect overhead expenses only as specified in Subsections 38(e)(6)(i) and (ii). These expenses shall exclude any and all expenses specified in Subsection 38(f).
- (g) If the Contractor submits a claim for delay damages pursuant to Subsection 43(b) above, the Contractor shall be liable to the Owner for a percentage of all costs incurred by the Owner in investigating, analyzing, negotiating, and litigating or arbitrating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.
- (h) Any change in the Contract Time for Completion or Contract Completion Date shall be accomplished only by issuance of a Change Order.
- (i) **Agreed Compensation/Liquidated Damages for Contractor Delay:** If the Contractor fails to complete the Work within the Time for Completion or the Contract Completion Date, the Contractor shall be liable to the Owner in the amounts set forth in the Supplemental Special Conditions, if any, not as a penalty, but as fixed, agreed, and liquidated damages for delay until the Work is substantially or finally completed as the case may be. If liquidated damages are not so fixed in the Supplemental Special Conditions, the Contractor shall be liable for any and all actual damages sustained as a result of delay. In addition to damages for delay, whether liquidated or actual, the Contractor shall also be liable for any and all actual damages sustained by the Owner as a result of any other breach of the Contract, including, but not limited to, Defective Work and abandonment of the Contract.
- (j) If liquidated damages are provided by the Supplemental Special Conditions, the following provisions apply:
 - (l) If the Work is not substantially complete by the Time for Completion or Contract Completion Date, the Contractor shall owe to the Owner, not as a penalty but as liquidated damages for each and every partial or total calendar day of delay in Substantial Completion.

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- (2) Once the Work is substantially complete, the accrual of liquidated damages shall cease and the Contractor shall have thirty (30) calendar days in which to achieve the Final Completion Date.
- (3) If the Final Completion Date is not achieved on or before the thirtieth (30th) calendar day after Substantial Completion, and if the Owner has not granted any extension of time, the Contractor shall owe to the Owner, not as a penalty but as liquidated damages, the sum stated as liquidated damages for each and every partial or total calendar day of delay in Final Completion.
- (k) The Contractor waives any and all defenses as to the validity of any liquidated damage provisions in the Special Conditions or other Contract Documents, or of any liquidated damages assessed against the Contractor, on the grounds that such damages are void as penalties or are not reasonably related to actual damages.

44. INSPECTION FOR SUBSTANTIAL COMPLETION & FINAL COMPLETION

- (a) The Contractor shall notify the Owner, in writing on the certificate of partial completion or Substantial Completion by the Contractor of the date when the Work or designated portion thereof, will be, in the Contractor's opinion, substantially complete and ready for inspection and testing to determine if it has reached Substantial Completion. The notice shall be given at least ten (10) days in advance of said date and shall be forwarded through the Architect/Engineer, who will attach its written endorsement as to whether or not it concurs with the Contractor's statement that the Work will be ready for inspection and testing on the date given. The Architect/Engineer's endorsement is a convenience to the Owner only and shall not relieve the Contractor of its responsibility in the matter nor shall the Architect/Engineer's endorsement be deemed to be evidence that the Work was substantially complete and ready for inspection and testing. Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor, Owner and Architect/Engineer.

The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the Project function properly and in accordance with the Contract Documents. The Contractor shall furnish access for the inspection and testing as provided in Section 21 of these Special Conditions. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in a written list of unfinished Work and Defective Work, commonly referred to as a "punch list", which must be finished and corrected to obtain the Final Completion Date.

After successful completion of the testing and the Architect / Engineer determines that, in its opinion, the Work, either in whole or in part, is substantially complete, the Architect / Engineer shall notify the Owner, in writing on the certificate of partial completion or Substantial Completion by the Architect/Engineer, that the Work, or a specified portion thereof, is recommended to be declared substantially complete. The Owner shall notify the Contractor, in writing, of the date the Owner accepts the Work, or the specified portion thereof, as substantially complete or the Owner shall notify the Contractor of the deficiencies to be corrected or completed before such Work will be accepted as substantially complete.

- (b) The Contractor shall notify the Owner, in writing on the certificate of completion by the Contractor of the date when the Work has reached or will reach the Final Completion Date and will be ready for final inspection and testing. The notice shall be given at least five (5) days in advance of said date and shall be forwarded through the Architect/Engineer, who will attach its endorsement as to whether or not it concurs in the Contractor's statement that the Work will be ready for inspection and testing on the date given. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Work is finally and totally complete, including the elimination of all defects, the Work shall be finally accepted by the Owner and Final Payment shall be made in accordance with Section 36 of these Special Conditions.

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- (c) The Architect/Engineer shall conduct the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more Substantial Completion or Final Completion Date re-inspections are required, the Contractor shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Contractor.
- (d) A representative of the State Fire Marshal's Office will either be present at the Substantial Completion and Final Completion inspections or otherwise inspect the completed Work and advise the Owner whether the Work meets the fire safety requirements of the applicable building code.
- (e) Approval of Work at or as a result of any inspection required herein shall not release the Contractor or its surety from responsibility for complying with the Contract.

45. GUARANTEE OF WORK

- (a) Except as otherwise specified, all Work shall be, and is hereby, guaranteed by the Contractor against defects resulting from the use of materials, equipment or workmanship, which are defective, inferior, or not in accordance with the terms of the Contract, for one (1) year from the Final Completion Date. Equipment and facilities which have seasonal limitations on their operation (e.g. heating or air conditioning units) shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the Owner. Where the Owner agrees to take Beneficial Occupancy of a portion or phase of the Work which has been determined to be substantially complete before the entire Work is finally completed, the guarantees for the materials, equipment and workmanship in that portion or phase shall begin on the date that the Owner takes Beneficial Occupancy, unless otherwise specified in the Supplemental Special Conditions, Special Conditions, or by separate agreement. At six (6) months and eleven (11) months after Substantial Completion, the Contractor shall meet with the Owner to review the status of and assign value to any unresolved warranty, guarantee, and punch list items.
- (b) If, within any guarantee period, Work which is not in accordance with the Contract, Defective Work, or inferior material, equipment or workmanship is noted by the Owner or Architect/Engineer which requires or renders necessary repairs or changes in connection with the guaranteed Work, the Contractor shall, promptly upon receipt of notice from the Owner, such notice being given not later than two weeks after the guarantee period expires, and without expense to the Owner:
 - (1) Place in satisfactory condition in every particular all of such guaranteed Work and correct all defects, inferior materials, equipment or workmanship therein;
 - (2) Make good all damage to the structure or Site or equipment or contents thereof, which, in the opinion of the Owner or the Architect/Engineer, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract; and
 - (3) Make good any Work or materials or the equipment and contents of structures and/or Site disturbance that results from fulfilling the provisions of this Section.
- (c) In any case, when in fulfilling the requirements of the Contract and this guarantee or any other guaranty or warranty, the Contractor disturbs any work performed by a separate contractor, the Contractor shall restore such work to a condition satisfactory to the Architect/Engineer and Owner and guarantee such restored work to the same extent as if it was guaranteed under the Contract.
- (d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee as set forth in this Section, the Owner may have the defects or inferior materials, equipment or workmanship corrected and the Contractor and its surety shall be liable for all expense incurred.
- (e) All special warranties and guarantees applicable to definite parts of the Work that may be stipulated in or required by the Contract Documents shall be subject to the terms of this Section during the

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first year of the life of such special warranty or guarantee.

- (f) The guarantee of this Section shall be in addition to and not in lieu of all other warranties, express or implied, applicable to or arising from the Contract or by law.
- (g) Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for Defective Work under Section 30. This Section relates only to the specific obligation of the Contractor as set forth in this Section to correct the Work and does not limit the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's other obligations under the Contract Documents.
- (h) In the event the Work of the Contractor is to be modified by another contractor, either before or after the Final Inspection provided by Section 44 of the Special Conditions, the Contractor shall remain responsible in all respects under this Section's Guarantee of Work and under any other warranties or guarantees, express or implied, applicable to or arising from the Contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying the Contractor's Work. The Contractor and the contractor making the modifications shall each be solely responsible for their respective work. The contractor modifying the earlier Work shall be responsible for any damage to or defect introduced into the Work by the Contractor's modification. If the Contractor claims that a subsequent contractor has introduced defects of materials and/or workmanship into the Work, it shall be the burden of the Contractor to demonstrate clearly the nature and extent of such introduced defects and the other contractor's responsibility for those defects. Any contractor modifying the work of another shall have the same burden if the Contractor asserts that defects in its work were caused by the contractor whose work the other Contractor is modifying.
- (i) The Contractor shall indemnify and hold harmless the Owner and the Owner's consultants, representatives, agents and employees from and against any and all claims, causes of action, losses, costs, expenses or damages, including but not limited to attorney's fees, of any kind or nature whatsoever, arising from or relating to any bodily injury, including sickness, disease or death, or any property damage, that result from or arise out of the Work performed by the Contractor, or by or in consequence of any neglect in safeguarding the Work, through the use of unacceptable materials in the Work, or resulting from any act, omission, negligence, or misconduct of the Contractor, any of its subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. The Owner may retain as much of the moneys due the Contractor under the Contract as the Owner considers necessary to ensure that a fund will be available to pay a settlement or judgment of such suits, actions, or claims. If insufficient monies are or will become due, the Contractor's surety and/or insurers will not be released from liability until all such claims and actions have been settled and suitable evidence to that effect has been furnished the Owner.

46. ASSIGNMENTS

Neither party to the Contract shall assign the Contract in whole or any part without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to it hereunder, without the prior written consent of the Owner. Consent to assignment shall not be unreasonably withheld. No assignment shall relieve any party from its obligations under the Contract.

47. CONTRACTUAL DISPUTES

- (a) Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after Final Payment; however, written notice of the Contractor's intention to file such claim must be given within fourteen (14) days of the time of the occurrence or beginning of the Work upon which the claim is based. Such notice shall state that it is a "notice of intent to file a claim" and

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include a written statement describing the act or omission of the Owner or its agents that allegedly caused or may cause damage to the Contractor and the nature of the claimed damage. The submission of a timely notice is a prerequisite to recovery under this Section. Failure to submit such notice of intent within the time and in the manner required shall be a conclusive waiver of the claim by the Contractor. Oral notice, the Owner's actual knowledge, or a written notice given after the expiration of fourteen (14) days of time of the occurrence or beginning of the Work upon which the claim is based, shall not be sufficient to satisfy the requirements of this Section. Although the Contractor may be required to submit certain classes of claims prior to Final Payment, and the Contractor is not prevented from submitting claims during the pendency of the Work, the Owner shall not be obligated to render a final written decision on any claim until after Final Payment. All claims shall state that they are "claims" pursuant to this Section, be submitted along with all practically available supporting evidence and documentation and the certification required by Subsection 47(f), and request a final decision. Certificates for payment, applications for payment, vouchers, invoices and similar requests for payment submitted for Work done by the Contractor in accordance with the expected Contract performance are routine submissions and shall not be considered claims under this Section. Proposed or requested Change Orders, demands for money compensation or other relief, and correspondence and e-mails to the Owner or its representatives, which do not strictly comply with the requirements of this Section, shall not be considered claims under this Section.

- (b) No written decision denying a claim or addressing issues related to the claim shall be considered a denial pursuant to this Section unless the written decision makes express reference to this Section and is signed by the City Manager or the City Manager's designee. The Contractor may not institute legal action prior to receipt of the Owner's final written decision on the claim unless the Owner fails to render such a decision within ninety (90) days of submission of the claim, at which time the claim shall be deemed denied.
- (c) The decision of the City Manager or other signatory on the Contract shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in § 2.2-4364 of the Code of Virginia. Failure of the Owner to render a decision within 90 days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Owner's failure to render a decision within 90 days shall be the Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to § 2.2-4365 of the Code of Virginia has been established for contractual claims under the Contract.
- (d) The Owner may enter into an agreement with the Contractor to submit disputes arising from the performance of the Contract to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the Owner shall be non-binding.
- (e) In the event that a dispute, claim or controversy between the Owner and the Contractor arises regarding the requirements of the Contract, the performance of the Work, payment due the Contractor, the terms of any Change Order, or otherwise, the Contractor shall not stop, suspend or delay the Work or any part of the Work to be performed under the Contract, or under any Change Order, or as ordered by the Owner. The Contractor shall continue to diligently prosecute the Work to completion, including work required in any Change Order or as directed by the Owner.
- (f) Along with a claim submitted under this Section, the Contractor shall submit a claim certification form certifying that the claim is a true and accurate representation of the claim. Claims submitted without the claim certification form shall not constitute a proper claim and, if not submitted with the certification within the time required, shall be deemed to be waived.
- (g) The remedies provided in these Special Conditions, including costs, expenses, damages or extensions of time, shall be the Contractor's sole remedies for the acts, omissions or breaches of the Owner, which shall survive termination or breach of the Contract.

48. ASBESTOS

- (a) This Section applies to projects involving existing buildings where asbestos abatement is not a part of the Work, when the scope of the project has been reviewed and a comprehensive survey conducted by an individual licensed by the Virginia Department of Professional and Occupational Regulation to conduct building inspections for asbestos containing materials in buildings, and where the Owner has attempted to remove or encapsulate all asbestos containing material that may become friable or damaged during the Project.

Prior to commencement of Work, the results of the comprehensive survey or any other asbestos survey shall be made available to the Contractor, who shall be responsible for performing its Work so as not to disturb any remaining asbestos, encapsulated or otherwise, identified in such survey or surveys.

If the Contractor discovers or inadvertently disturbs any material that the Contractor knows, should have known or has reason to believe, may contain asbestos that has not been previously identified, was overlooked during the removal, was deemed not to be friable or was encapsulated, the Contractor shall stop Work in the area containing or suspected to contain the asbestos, secure the area, and notify the Owner and the Architect/Engineer immediately by telephone or in person with written notice as soon as possible. The Owner will have the suspect material sampled.

If the sample is positive and must be disturbed in the course of the Work, the Owner shall have the material repaired or removed and shall pay for the bulk sample analysis.

- (b) If asbestos abatement is included as a part of the Work, the Contractor shall assure that the asbestos abatement work is accomplished by those duly licensed as described in these Special Conditions and in accordance with the specific requirements of the Contract and all applicable laws and regulations.
- (c) If asbestos abatement is included as part of the Work, the licensed asbestos Subcontractor shall obtain the insurance required under these Special Conditions.

49. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT

- (a) As a part of the Work, the Contractor in conjunction with its Subcontractors and Suppliers shall provide the Owner's operations and maintenance personnel with adequate instruction and training in the proper operation and maintenance of any equipment, systems, and related controls provided or altered in the Work. The training requirements may be further defined in the specifications.
- (b) The Contractor shall provide the Owner with a minimum of two (2) copies of operating, maintenance and parts manuals for all equipment and systems provided in the Work. Further specific requirements may be indicated in the Specifications.

50. PROJECT MEETINGS

- (a) The intention of this Section is that the Contractor, the Owner and the A/E have timely exchange of information and cooperate to accomplish the Work as required by the Contract Documents. The Contractor is responsible for managing the Work, obtaining approvals and requesting clarifications on a timely, reasonable basis. The Owner and its A/E are responsible for making a reasonable effort to provide timely responses to the Contractor.
- (b) **Preconstruction Meeting:**
Prior to the start of construction and no later than 15 calendar days after the Notice to Proceed, a "Preconstruction" meeting shall be held with attendees to include the Project Manager and Project Inspector, the Architect/Engineer's project manager and representatives of each design discipline involved in the Project, the City Fire Marshal, the Contractor's project manager and superintendent (and scheduler, if Contractor desires), and representatives of the Contractor's major Subcontractors.

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The purpose of the meeting is to clarify and discuss the specifics related to, but not limited to, the following:

- (1) Persons involved from each entity and their chain of authority including the names of persons authorized to sign Change Orders and any limits to their authority. Name of Contractor's on-site certified responsible land disturber.
- (2) Names, addresses, telephone numbers and FAX numbers to be used for requests for information (RFI), requests for clarification, requests for proposals (RFP), shop drawings, Submittals, and notices.
- (3) Contractor's proposed construction schedule and Owner's sequencing requirements, if any.
- (4) Schedule of Values and certificate for payment requirements and procedures.
- (5) Procedures for shop drawings, product data and Submittals.
- (6) Procedures for handling Field Orders and Change Order form.
- (7) Procedures for Contractor's request for time extension, if any.
- (8) Construction Site requirements, procedures and clarifications to include:
 - Manner of conducting the Work
 - Site specialties such as dust and erosion control, stormwater management, project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic
 - Safety
 - Layout of the Work
 - Quality control, testing, inspections, and notices required
 - Site visits by the A/E and others
 - Project Inspector duties
 - Running punch list
 - As-built drawings
- (9) Procedures and documentation of differing or unforeseen Site conditions
- (10) Monthly pay meeting
- (11) Assignment of responsibility for generation of meeting minutes of all Project meetings.
- (12) Project close-out requirements and procedures
- (13) Project records

(c) **Monthly Pay Meeting:**

Section 36 establishes the requirement for a monthly pay meeting which will usually be held at or near the Site. In addition to Owner, A/E and Contractor representatives, the following representatives, at a minimum, should be available to attend portions of the meeting, as applicable or necessary:

- Project Inspector
- Contractor's project superintendent
- A/E representative of each discipline where Work was performed for the current pay request or where Work is projected to be performed in the coming month.
- A representative of each subcontractor who performed work included in the current pay request.
- A representative of each subcontractor who is projected to perform work in the coming month.

The following topics should be included, as a minimum, in the monthly pay meeting:

- (1) Observations of status, quality and workmanship of Work in progress
- (2) Validation of the Schedule of Values and certificate for payment

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- (3) Conformance with proposed construction schedule
 - (4) Outstanding requests for information, requests for clarification and requests for proposal
 - (5) Submittals with action pending
 - (6) Status of pending Change Orders
 - (7) Status of running punch list items
 - (8) Work proposed for coming pay period
 - (9) Discussions of any problems or potential problems which need attention
- (d) **Other Meetings:**
Requirements for other meetings, such as progress meetings, coordination meetings, pre-installation meetings and/or partnering meetings, may be included in the Contract Documents.

*** * * END OF SPECIAL CONDITIONS * * ***